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THE

GOVERNMENT OF INDIA

BEING A DIGEST OF THE STATUTE LAW

RELATING THERETO

WITH HISTORICAL INTRODUCTION

AND

ILLUSTRATIVE DOCUMENTS

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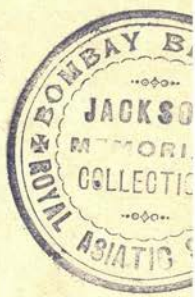

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PREFACE

In the year 1873 the Secretary of State for India sent to the Government of India the rough draft of a Bill to consolidate the enactments relating to the Government of India. This draft formed the subject of correspondence between the India Office and the Government of India, and an amended draft, embodying several proposals for alteration of the law, was submitted to the India Office by the Government of India in the month of February, 1876. After that date the matter was allowed to drop.

The case for consolidating the English statutes relating to India is exceptionally strong. The Government of India is a subordinate Government, having powers derived from and limited by Acts of Parliament. At every turn it runs the risk of discovering that it has unwittingly transgressed one of the limits imposed on the exercise of its authority. The enactments on which its authority rests range over a period of more than 120 years. Some of these are expressed in language suitable to the time of Warren Hastings, but inapplicable to the India of to-day, and unintelligible except by those who are conversant with the needs and circumstances of the times in which they were passed. In some cases they have been duplicated or triplicated by subsequent enactments, which reproduce with slight modifications, but without express

repeal, the provisions of earlier statutes; and the combined effect of the series of enactments is only to be ascertained by a careful study and comparison of the several parts. A consolidating Act would repeal and supersede more than forty separate statutes relating to India.

In England the difficulty of threading the maze of administrative statutes is mitigated by the continuity of administrative tradition. In India there is no similar continuity. The Law Member of Council, on whom the Governor-General is mainly dependent for advice as to the nature and extent of his powers, brings with him from England either no knowledge or a scanty knowledge of Indian administration, and holds office only for a term of five years. The members of the Civil Service who are posted at the head-quarters of the Central and Local Governments are engaged in climbing swiftly up the ladder of preferment, and rarely pause for many years on the same rung. Hence the risk of misconstruing administrative law, or overlooking some important restriction on administrative powers, is exceptionally great.

During various intervals of leisure since my return from India I have revised and brought up to date the consolidating draft of 1873, and have endeavoured to make it an accurate reproduction of the existing statute law. The revised draft was submitted to the Secretary of State, but the conclusion arrived at, after communication with the Government of India, was adverse to the introduction of a consolidating measure into Parliament at the present time. It was, however, suggested to me by the authorities at the India Office that the draft might, if published as a digest of the existing law, be useful both to those who are practically concerned in Indian administration, and to students of Indian administrative law. It has accordingly been made the nucleus of the following pages.

The first chapter contains such amount of historical introduction as appeared necessary for the purpose of

making the existing law intelligible. The charters and Acts with which it deals have, of course, been carefully read, but beyond this the chapter makes no pretence to independent research. There are many excellent summaries of British Indian history, and the history of particular periods has been treated with more or less fullness in the biographies of Indian statesmen, such as those which have appeared in Sir William Hunter's series. But a history of the rise and growth of the British Empire in India, on a scale commensurate with the importance of the subject, still remains to be written. Sir Alfred Lyall's admirable and suggestive Rise and Expansion of the British Dominion in India appears to me to indicate, better than any book with which I am acquainted, the lines on which it might be written.

The second chapter contains a short summary of the existing system of administrative law in India.

The third chapter is a digest of the existing Parliamentary enactments relating to the government of India, with explanatory notes. This digest has been framed on the principles now usually adopted in the preparation of consolidation Bills to be submitted to Parliament; that is to say, it arranges in convenient order, and states in language appropriate to the present day, what is conceived to be the net effect of enactments scattered through several Acts. When this process is applied to a large number of enactments belonging to different dates, it is always found that there are *lacunae* to be filled, obscurities to be removed, inconsistencies to be harmonized, doubts to be resolved. The Legislature can cut knots of this kind by declaring authoritatively how the law is to be construed. The draftsman or the text-writer has no such power. He can merely state, to the best of his ability, the conclusions at which he has arrived, and supply materials for testing their accuracy.

The fourth chapter contains certain rules made under statutory authority with respect to the constitution and procedure of the Indian Legislative Council.

The fifth chapter contains the charters of the four chartered High Courts in India.

The sixth chapter, which deals with the application of English law to the natives of India, is based on a paper which I read a short time ago at a meeting of the Society of Comparative Legislation. It points to a field in which useful work may be done by students of comparative jurisprudence.

In the seventh chapter I have tried to explain and illustrate the legal relations between the Government of British India and the Governments of the Native States by comparison with the extra-territorial powers exercised by British authorities in other parts of the world, such as the countries where there is consular jurisdiction, and in particular the modern protectorates. The subject is interesting and important, but full of difficulty. The rules and usages which govern the relation between States and peoples of different degrees and kinds of civilization are in a state of constant flux and rapid growth, and on many topics dealt with in this chapter it would be unsafe to lay down general propositions without qualifying and guarding words. There are quicksands at every step.

In the eighth and final chapter I have printed some documents to which reference is often needed both by students and by practical administrators, but which are not always easy of access.

I am indebted for valuable assistance to friends both at the India Office and in India, such as Sir Alfred Lyall, Sir Dennis FitzPatrick, Sir Philip Hutchins, Sir Arthur Wilson, and Mr. M. D. Chalmers, the present Law Member of the Governor-General's Council, whose departmental notes I have freely used. Frequent reference has also been

made to the minutes of Sir H. S. Maine printed for the Indian Legislative Department in 1890.

But although the book owes its origin to an official suggestion, and has benefited by the criticisms of official friends, it is in no sense an official publication. For any statements or expressions of opinion I am personally and exclusively responsible.

I am indebted for the index to Mr. J. S. Cotton.

C. P. Ilbert.

3 Whitehall Gardens,
February, 1898.

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1486. Cape of Good Hope discovered by Bartholomew Diaz.	
1493. Pope Alexander the Sixth's Bull.	
1497-8. Voyage of Vasco da Gama to India.	
1535-6 (February). Grant of 'Capitulations' by Solyman the Magnificent to Francis I.	1556-1605. Akbar.
1558-1603. Elizabeth.	1565. Fall of Hindu kingdom of Vijayanagar.
1572. Massacre of Huguenots.	
1577-80. Drake's voyage round the world.	
1579. Capitulations granted to England.	1579. Thomas Stevens visits Goa.
1580. Spain annexes Portugal.	
1581. Charter granted to Levant Company.	
1588. Defeat of the Spanish Armada. Levant Company incorporated.	
1589. Henry IV of France.	1589. An English expedition reaches India by land.
1598. Edict of Nantes.	1600. East India Company founded.
1599. Death of Philip II of Spain.	1602. Dutch East India Company founded.
1603. James I.	1604. French East India Company founded.
1606. First Charter of Virginia Company.	1605-27. Jahangir.
1609. Second Charter of Virginia Company.	1609. Charter of East India Company renewed.
Henry IV of France murdered by Ravaillac.	1611. English at Masulipatam.
	1612. English at Surat.
	1615. Sir Thomas Roe sent as Envoy to Great Mogul.
	Authority to execute martial law granted to East India Company.

General History.	India.
	1616. Tranquebar granted to the Danes.
1618. Beginning of Thirty Years' War.	1620. English agents in Bengal.
	1622–3. (February). Massacre of Amboyna.
1624–42. Richelieu first minister of France.	1623–4 (February). East India Company authorized to grant their officers power of executing martial law.
1625. Charles I.	
1628. Charter granted to Massachusetts Company.	1628–58. Shah Jahán.
1632. Battle of Lutzen.—Death of Gustavus Adolphus.	1634. English permitted to trade throughout the dominions of the Mogul.
	1639. Madras bought by East India Company. — Fort St. George built.
1642–49. Civil War in England.	1640. East India Company's factory at Húgli.
1643–1715. Louis XIV.	
1648. Peace of Westphalia.—End of Thirty Years' War.	
1649. Commonwealth.	
1651. Navigation Act.	
1651–54. First war between England and Holland.	
1652. Dutch East India Company establish a station at the Cape.	
1653. Oliver Cromwell, Protector.	1657. Cromwell's charter to East India Company.
1655. Capture of Jamaica.	1658. Madras made independent of Bantam.
	1658–1707. Aurangzeb.
1660. Charles II. Navigation Act renewed.	1661. English get Bombay as part of dowry of Catherine of Braganza. (April 3.) Charles II grants charter to East India Company
1664. New York taken from the Dutch.	1664. Sivaji becomes Raja of Maráthás. Defence of Surat against Sivaji. French East India Company (Colbert's) established.
1665–67. Second war between England and Holland.	
1667. Treaty of Breda.	1669. Charles II gives Bombay to East India Company.
1672–74. Third war between England and Holland.	1677. Charter granting Company powers of coinage.
	1679. Aurangzeb at war with the Rajputs.
	1680. Death of Sivaji.

General History.	India.
	1681. Bengal made a separate presidency.
1683. Death of Colbert.	1683. Rising at Bombay quelled. Charter giving powers of martial law and establishing Admiralty Courts.
1685. James II. Revocation of Edict of Nantes.	1686. Calcutta founded. Charter of James II to East India Company.
	1687. East India Company's factory moved from Surat to Bombay. English driven from Húgli, but allowed to return. Charter establishing municipality at Madras.
1688. Revolution in England.	1687–89. East India Company's war against Aurangzeb.
1689. William III. Peter the Great becomes Czar of Russia.	
1689–97. War between England and France.	1691. 'New' or 'English' Company established.
1694. Bank of England incorporated.	1693 (October 7). Grant of new charter to old East India Company. (Supplemental charters November 11, 1693, and September 28, 1694.)
	1696. East India Company build Fort William.
1697. Treaty of Ryswick.	1698. Charter modifying voting powers and qualifications of East India Company. Act (9 & 10 William III, c. 44) authorizing incorporation of 'General Society.' (September 3.) Charter incorporating the General Society as a regulated company. (September 5.) Charter incorporating the 'English Company.'
1700. War between Sweden and Russia.	East India Company buy site of Calcutta (Aitchison's Treaties, i. 2).
1702. Anne.	
1702–13. War of Spanish Succession.	1702. Indenture Tripartite amalgamating the Old Company and the English Company.
1707. Union of England and Scotland.	1707. Death of Aurangzeb.
	1708. Lord Godolphin's award as to terms of amalgamation.

General History.	India.
1713. Treaty of Utrecht.	1709. Old Company's charters surrendered.—The two companies united as the United East India Company.
1714. George I. French occupy Mauritius.	
1715. Rebellion in Scotland.	
1715–74. Louis XV.	
1716–20. Law's 'system.'	1719. New French East India Company.
1720. South Sea Bubble.	
1721–42. Walpole, Prime Minister.	1722. Charles VI grants charter to Ostend Company.
1725. Death of Peter the Great.	1725. Charter of Ostend Company withdrawn.
1727. George II.	1726. Municipal charters granted to Calcutta, Madras, and Bombay. Mayors' courts established in each place.
	1728. Danish Company extinguished.
1732. Colony of Georgia founded.	1731. Swedish India Company formed.
1740–44. Anson's voyages.	1739. Invasion of India by Nádir Sháh.
1740–48. Wars of the Austrian Succession.	
1740–86. Frederick II of Prussia.	1742. Aliverdi Khan, Nawab of Bengal.
1744. Pelham, Prime Minister.	
1745–6. Rebellion in Scotland.	1746. Labourdonnais takes Madras.
1748. Treaty of Aix-la-Chapelle.	1748. English besiege Pondicherry. Madras restored to English by treaty of Aix-la-Chapelle.
	1749–54. War of succession in the Carnatic.
	1750–54. War between French and English Companies.
	1751. Clive seizes Arcot.
	1752. French surrender Trichinopoly.
	1753. New charters granted to Presidency towns.
1754. Duke of Newcastle, Prime Minister.	1754. French recall Dupleix. Treaty of peace signed at Pondicherry. Mutiny Act (27 Geo. II, c. 9) passed for Indian forces.
1756–61. The elder Pitt directs foreign policy of England.	1756. Suráj-ud-doulá becomes Nawab of Bengal and (June) takes Calcutta. (Black Hole Massacre.)
1756–63. Seven Years' War.	Rupture between France and England.

General History.	India.
	1757 (January). Clive recovers Calcutta.
	(June 23.) Battle of Plassey.
	1758. Lally's expedition reaches India.—Lally besieges Madras.
	Maráthá invasion of Punjab.
1759. Wolfe takes Quebec.	1759. Lally raises siege of Madras. —Defeat of Dutch in Bengal.
1760. George III.	1760. Coote defeats Lally at Wandewash.
	Clive returns to England.
	1760–65. Period of misrule in Bengal.
	1761. Coote takes Pondicherry.—Fall of the French power in Deccan.
1762. Bute, Prime Minister.	Ahmed Shah defeats Maráthás at
Catherine, Empress of Russia.	Battle of Paniput.
1763. Peace of Paris.—End of Seven Years' War.	1763. Pondicherry restored to France (Peace of Paris).
George Grenville, Prime Minister.	Massacre of English prisoners at Patna.
	1764 (October 23). Battle of Baxar.
1765. Stamp Act passed.	1765. Clive returns to India, accepts Diwani of Bengal for the
(July.) Rockingham, Prime Minister.—Stamp Act repealed.	Company, makes treaties of alliance with Oudh and the Mogul emperor.
1766 (July). Duke of Grafton, Prime Minister.	1766. Grant of Northern Sarkars to Company.
	(November.) Parliamentary inquiry into affairs of Company.
	1767–69. First war of English with Hyder Ali.
	1767. Clive finally leaves India.
	Acts of Parliament relating to East India Company (7 Geo. III, cc. 48, 49, 56, 57). Power to declare dividend restrained. Company to pay £400,000 annually into Exchequer.
1768–71. Captain Cook circumnavigated the world.	1768. Restraint on dividend continued (8 Geo. III, c. 11).
	The Nizám cedes the Carnatic.
	1769. New arrangement for five years between Government and Company. Payment of annuity of £400,000 continued (9 Geo. III, c. 24).

General History.	India.
1770. Lord North, Prime Minister.—Disturbance at Boston.	1770. Famine in Bengal.
	1771 (August 28). Company resolve to 'stand forth as Diwan' of Bengal.
	1772. Warren Hastings, Governor of Bengal.—Draws up plan of government.
	Directors of East India Company declare a deficit, and appeal to Lord North for help.
	(November.) Secret Parliamentary inquiry into affairs of Company.
1773. The people of Boston board the English ships and throw the tea overboard.	1773. Regulating Act passed (13 Geo. III, c. 63).
	Motion condemning Clive rejected.
1774. Congress meets at Philadelphia and denies right of Parliament to tax colonies.—Accession of Louis XVI.	1774. Warren Hastings becomes first Governor-General of India.
	Rohilla War.
	Death of Clive.
1775. George Washington appointed Commander-in-Chief of American forces.	1775. Benares and Ghazipur ceded to Company.
1775-83. War of American Independence.	Government of Bombay occupy Salsette and Bassein.
1776 (July 4). Declaration of Independence by United States.	1776. Trial and execution of Nuncomar.
	Maráthá War.
1778. Death of Earl of Chatham.	1778. English seize French settlements in India.
War with France in Europe.	
France recognizes independence of United States.	1779. Maráthás repel English advance on Poona.
	League of Mysore. Maráthás and Nizám against English.
	1780. Hyder Ali ravages Carnatic.
1781. England at war with Spain, France, Holland, and American colonies.	1781. Benares insurrection.—Defeat of Hyder Ali at Porto Novo.—Treaty of Peace with Maráthás.
Cornwallis surrenders at Yorktown.	Parliamentary inquiries into administration of justice in Bengal and into causes of Carnatic War.—Act passed to amend the Regulating Act (21 Geo. III, c. 70).

General History.	India.
1782. Lord North resigns.—Lord Rockingham and then Lord Shelburne, Prime Ministers. Grattan's Declaration of Right accepted by Irish Parliament.	1782. Death of Hyder Ali. Naval battles between French and English in Bay of Bengal.
1783 (April 2). Coalition ministry under Duke of Portland as Prime Minister. (January.) Treaty of Versailles.—Peace signed between England and United States.	1783. Pondicherry and other French settlements restored to France by Treaty of Versailles. 1783–4. Fox's India Bill introduced and rejected.
1783 (December 23)–1801. William Pitt, Prime Minister.	1784. Treaty of peace with Tippu, Sultan of Mysore.—General peace in India.
1783. General peace in Europe.	Pitt's Act establishing Board of Control (24 Geo. III, sess. 2, c. 25).
	1785. Warren Hastings leaves India. Mahdajee Sindia (Maráthá) occupies Delhi.
1786. Burke moves impeachment of Warren Hastings.	1786. Act passed to enlarge powers of Governor-General (26 Geo. III, c. 16).
	1786–93. Lord Cornwallis, Governor-General.
1788–95. Trial of Warren Hastings.	1787. Tippu sends embassies to Paris and Constantinople.
1789. Beginning of French Revolution.	1789–90. Tippu attacks Travancore.
	1790–92. War with Tippu.
	1791. Bangalore taken.
	1792. Tippu signs treaty of peace ceding territory.
1793. Execution of Louis XVI. War between England and France declared February 11.	1793. English take Pondicherry. Permanent settlement of Bengal. Cornwallis leaves India. Act renewing Company's charter (33 Geo. III, c. 52).
	1793–98. Sir J. Shore (Lord Teignmouth), Governor-General.
1795. Cape of Good Hope captured from Dutch.	1795. The Maráthás defeat the Nizám.
	1796. Ceylon taken from Dutch.
1797. Battle of Cape St. Vincent.—Mutiny at the Nore.	1797. Shah Zeman invades Punjab.
1798. Irish Rebellion. French expedition to Egypt.—(August 1) Battle of the Nile.	1798–1805. Marquis Wellesley, Governor-General.

General History.	India.
1799. Buonaparte, First Consul.	1799. Capture of Seringapatam. Death of Tippu. Partition of Mysore.
1800. Union of Great Britain and Ireland.	1800. Subsidiary treaty with Nizám.
Battles of Marengo and Hohenlinden.	
Malta taken from French.	
1801. Addington, Prime Minister.	1801. Incorporation of Carnatic. Oudh cedes territory by subsidiary treaty.
1802. Treaty of Amiens. Cape restored to Dutch.	1802. Treaty of Bassein and restoration of Peshwá.
1803 (May). War declared between England and France.	1803. League of Sindia and Nagpur Raja (Maráthás).
	Maráthá War (Battles of Assaye, Argaum, Laswaree).
1804. Pitt's second ministry.	1804. Gáekwar of Baroda submits to subsidiary system.
Napoleon, Emperor.	
1805 (October 21). Battle of Trafalgar.—Capitulation of Ulm.	1805 (July to October). Lord Cornwallis again Governor-General. —Succeeded by Sir George Barlow (till 1807).
(December 2.) Battle of Austerlitz.	
1806 (January 23). Death of William Pitt. — Ministry of 'All the Talents.' — Lord Grenville, Prime Minister.	1806. Mutiny of Sepoys at Vellore.
Berlin Decrees issued, and Orders in Council issued in reply.	
1807. Duke of Portland, Prime Minister.	1807. War with Travancore.
1808–14. Peninsular War.	1807–13. Lord Minto, Governor-General.
1809. Walcheren expedition.—Battle of Wagram.	1809. Travancore subdued.
Perceval, Prime Minister.	
English occupy the Cape.	
1810. Mauritius taken from French.	
1812. Napoleon invades Russia.	
War between England and United States.	
(June.) Lord Liverpool, Prime Minister (till 1827).	
(July.) Battle of Salamanca.	
1813 (June). Battle of Vittoria.	1813. Charter Act of 1813 (53 George III, c. 155).
(October 16–19.) Battle of Leipzig.	East India Company loses monopoly of Indian trade.

General History.	India.
	1813-23. Lord Hastings, Governor-General.
1814. First Peace of Paris. — Napoleon abdicates. Cape ceded to England.	1814-5. Gúrkha War.
1815 (February). Napoleon returns from Elba.	1815. Kumaon ceded.
(June 18.) Battle of Waterloo.	1817. Pindáris conquered.
(November.) Second Peace of Paris.	1817-8. Third Maráthá War, ending in annexation of Poona and reduction of Holkar and Rajputana.
1820. George IV. Congress at Troppau, afterwards at Laybach.	1819. Wazír of Oudh assumes title of King.
1821 (May). Death of Napoleon Buonaparte. Congress of Verona.	
1822 (March 27). Canning appointed Governor-General of India but made Foreign Secretary instead (September).	1823-28. Lord Amherst, Governor-General.
1825. Commercial panic in England.	1824. War with Burma. Rangoon taken.
	1826. Storming of Bhurtpur. Annexation of Assam.
1827 (April 24). Canning, Prime Minister; dies August 8.	
(September 5.) Lord Goderich, Prime Minister.	
(October 20.) Battle of Navarino.	
1828 (January 25). Duke of Wellington, Prime Minister.	1828-35. Lord William Bentinck, Governor-General.
1830 (June 26). William IV.	1830. Mysore becomes a protected State.
(November 22.) Lord Grey, Prime Minister.	
1832 (June). Reform Bill passed.	1833. Charter Act (3 & 4 Will. IV, c. 85) terminates trading functions of East India Company and defines legislative powers of Governor-General in Council. Macaulay appointed legislative member of Governor-General's Council.
1834 (July 17). Lord Melbourne, Prime Minister; dismissed November 15.	1834. Annexation of Coorg.
(December 26.) Sir Robert Peel, Prime Minister.	
1835 (April 8). Sir Robert Peel resigns.	1835. Lord Heytesbury appointed Governor-General by Sir R. Peel but appointment cancelled by Whigs.
(April 18.) Lord Melbourne, Prime Minister.	

General History.	India.
	1836–42. Lord Auckland, Governor-General.
	1836. Lieutenant-Governorship of North-Western Provinces constituted.
1837. Queen Victoria.	1838. First Afghan War.
1839–42. War between England and China.	1839. Capture of Ghazní and Kandahar. Death of Ranjit Singh.
	1840. Surrender of Dost Mohammad.
1841 (September 6). Sir R. Peel, Prime Minister.	1841. Insurrection at Cabul and disastrous retreat of British troops.
	1842–44. Lord Ellenborough, Governor-General.
	1842. Pollock recaptures and evacuates Cabul.
	1843. Annexation of Sind (Battle of Meeanee). — Capture of Gwalior.
	1844–48. Lord Hardinge, Governor-General.
	1845. Danish possessions bought.
	1845–6. Sikh War. Battles of Múdkí and Ferozeshah (1845).
1846. Repeal of Corn Laws. (June.) Sir R. Peel resigns. (July 6.) Lord John Russell, Prime Minister.	1846. Battles of Aliwal and Sobraon.—Treaty of Lahore.
1848. Chartist riots.—Revolution in France.	1848-56. Lord Dalhousie, Governor-General.
	1849. Satára annexed. — Second Sikh War. Battles of Chillianwallah and Goojerat.—Punjab annexed.
	1850. Bombay Railway commenced.
1852. Louis Napoleon, Emperor. (February 27.) Lord Derby, Prime Minister. (December 28.) Lord Aberdeen, Prime Minister.	1852. Second Burmese War.—Pegu annexed.
	1853. Last Charter Act (16 & 17 Vict. c. 95) passed; remodels constitution of Legislative Council. Jhánsi, the Berars, and Nagpur annexed. —Telegraphs commenced.
1854–5. Crimean War.	1854. Bengal constituted a Lieutenant-Governorship.

General History.	India.
1855 (February 10). Lord Palmerston, Prime Minister.	
1856. Treaty of Paris.	1856. Oudh annexed.
	1856-62. Lord Canning, Governor-General.
	1857-8. Indian Mutiny.—Outbreaks at Meerut and Delhi (June). Delhi taken (September). First relief of Lucknow by Havelock and Outram (September). Final relief of Lucknow by Sir Colin Campbell (November).
1858 (February 25). Lord Derby, Prime Minister.	1858. Government of India Act, 1858 (21 & 22 Vict. c. 106), places British India under direct government of Crown.—Lord Canning, Viceroy.
	(November 1.) Queen's Amnesty Proclamation published in India.
1859. Italian War.—Battles of Magenta and Solferino.	1859. Punjab constituted a Lieutenant-Governorship under Sir John Lawrence.
(June 18.) Lord Palmerston, Prime Minister.	Indian Code of Civil Procedure passed.
	1860. Indian Penal Code passed.
	1861. Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), passed by Parliament.—Code of Criminal Procedure passed in India.
	1862-3. Lord Elgin, Viceroy.
	1864-69. Lord Lawrence, Viceroy.
	1864. Bhután Dwárs annexed.
1865 (November 6). Lord Russell becomes Prime Minister on death of Lord Palmerston.	1865. Indian Succession Act passed.
1866. War between Prussia and Austria.—Battle of Königgrätz or Sadowa.	1866. Famine in Orissa.
(July 6.) Lord Derby, Prime Minister.	1867 (September). Straits Settlements separated from India.
1868 (February 27). B. Disraeli, Prime Minister.	1868. Sher Ali, Amir of Afghanistan.

General History.	India.
1868. Abyssinian expedition. (December 9.) W. E. Gladstone, Prime Minister.	
1869 (November). Suez Canal opened.	1869–72. Lord Mayo, Viceroy.
1870. Franco-German War.—Revolution in France.	1869. Legislative Department of Government of India established.
1871. King William of Prussia becomes German Emperor.	1872. Indian Contract Act and Evidence Act passed.
1874 (February 21). B. Disraeli, Prime Minister.	1872–76. Lord Northbrook, Viceroy.
	1876–80. Lord Lytton, Viceroy.
1877. Russo-Turkish War.	1876–78. Famine in India.
	1877 (January 1). Queen proclaimed Empress of India at Delhi.
1878. Treaties of San Stefano (March) and Berlin (July).	1878. Invasion of Afghanistan.
	1879 (July). Treaty of Gandamak. (September.) Cavagnari killed at Cabul.—English invade Afghanistan.
	1880–84. Lord Ripon, Viceroy.
1880 (April 25). W. E. Gladstone, Prime Minister.	1880 (July). Abdurrahman recognized as Amir of Afghanistan.—Battle of Maiwand. General Roberts' march from Cabul to Kandahar.
1882. Indian troops used in the Egyptian War.	
	1884. Boundary Commission appointed to settle North-West frontier.
	1884–88. Lord Dufferin, Viceroy.
1885 (June 24). Lord Salisbury, Prime Minister.	1885. Third Burmese War.
1886 (February 6). W. E. Gladstone, Prime Minister.	1886 (January 1). Upper Burma annexed.
(August 3.) Lord Salisbury, Prime Minister.	(November 21.) Legislative Council established for North-Western Provinces.
1887. Jubilee of Queen Victoria's reign.	1888–93. Lord Lansdowne, Viceroy.
	1889. Military expeditions sent against hill tribes.
	1890. Chin and Lushai expeditions.—Rising in Manipur.
	1891. Massacre in Manipur.
1892 (August 18). W. E. Gladstone, Prime Minister.	1892. Constitution and procedure of Indian Legislative Councils altered by Indian Councils Act, 1892 (55 & 56 Vict. c. 14).

General History.	India.
1894 (March 3). Lord Rosebery, Prime Minister.	1893. Separate armies of Madras and Bombay abolished by Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62).
1895 (July 2). Lord Salisbury, Prime Minister.	(June 26.) Indian Mint closed.
	1894 (January 27). Lord Elgin, Viceroy.
	(December 27.) Import duty imposed on cotton.
	1895. Chitral Expedition.
	1896. Famine in India. Plague at Bombay and Poona.
1897 (June). Jubilee celebrations in England.	1897 (April 9). Legislative Council established for Punjab. Burma constituted a Lieutenant-Governorship, with a Legislative Council.
	(June 12.) Earthquake in Bengal. War on North-Western frontier.

Governors-General of Fort William in Bengal [1].

1774. Warren Hastings (Governor of Bengal from 1772).
1785. Sir J. Macpherson (temporary, February 1, 1785, to September 12, 1786).
1786. Lord Cornwallis.
1793. Sir John Shore (Lord Teignmouth).
1798. Sir Alured Clarke (temporary, March 6 to May 18, 1798).
1798. Earl of Mornington (Marquis Wellesley).
1805. Lord Cornwallis (took office July 30, died October 5).
1805. Sir George Barlow (temporary, October 10, 1805, to July 31, 1807).
1807. Lord Minto.
1813. Lord Moira (Marquis of Hastings).
1823. John Adam (temporary, January 9 to August 1, 1823).
1823. Lord Amherst.
1828. W. B. Bayley (temporary, March 13 to July 4, 1828).
1828. Lord William Bentinck.

Governors-General of India.

1834. Lord William Bentinck.
1835. Sir Charles Metcalfe (temporary, March 20, 1835, to March 4, 1836).
1836. Lord Auckland.
1842. Lord Ellenborough.
1844. Sir Henry (Lord) Hardinge.
1848. Lord Dalhousie.

[1] For more minute particulars as to dates see the India List.

Viceroys and Governors-General

(from Nov. 1, 1858).

1856. Lord Canning.
1858. Lord Canning (continued as Governor-General).
1862. Lord Elgin.
1864. Sir John (Lord) Lawrence.
1869. Lord Mayo.
1872. Lord Northbrook.
1876. Lord Lytton.
1880. Lord Ripon.
1884. Lord Dufferin.
1888. Lord Lansdowne.
1894. Lord Elgin.

Presidents of the Board of Control.

1784. Lord Sydney.
1790. W. W. Grenville (afterwards Lord Grenville).
1793. Henry Dundas (afterwards Viscount Melville).
1801. Lord Lewisham (afterwards Dartmouth).
1802. Lord Castlereagh.
1806 (February 12). Lord Minto.
1806 (July 26). Thomas Grenville.
1806 (October 1). George Tierney.
1807. Robert Dundas (afterwards Viscount Melville).
1809 (July). Lord Harrowby.
1809 (November). Robert Dundas (afterwards Viscount Melville).
1812. Earl of Buckinghamshire.
1816. George Canning.
1821. Charles Bathurst.
1822. Charles Watkins Williams-Wynn.
1828 (February). Robert Dundas (afterwards Viscount Melville).
1828 (Sept.). Lord Ellenborough.
1830. Charles Grant (afterwards Lord Glenelg).
1834. Lord Ellenborough.
1835. Sir John Cam Hobhouse.
1841 (Sept.). Lord Ellenborough.
1841 (October). Lord Fitzgerald and Vesci.
1843. Lord Ripon.
1846. Sir John Cam Hobhouse.
1852 (February 6). Fox Maule (afterwards Lord Panmure and Earl of Dalhousie).
1852 (February 28). John Charles Herries.
1852 (December 30). Sir Charles Wood (afterwards Viscount Halifax).
1855. Robert Vernon Smith (afterwards Lord Lyveden).
1858 (March 6). Lord Ellenborough.
1858 (June). Lord Stanley (afterwards Earl of Derby).

Secretaries of State for India.

1858. Lord Stanley (afterwards Earl of Derby).
1859. Sir Charles Wood (afterwards Viscount Halifax).
1866 (February). Lord de Grey and Ripon (afterwards Marquis of Ripon).
1866 (July). Lord Cranborne (afterwards Marquis of Salisbury).
1867. Sir Stafford Northcote (afterwards Earl of Iddesleigh).
1868. Duke of Argyll.
1874. Lord Salisbury.
1878. Gathorne Hardy (afterwards Earl of Cranbrook).
1880. Lord Hartington (afterwards Duke of Devonshire).
1882. Lord Kimberley.
1885. Lord Randolph Churchill.
1886 (February). Lord Kimberley.
1886 (August). Sir Richard Cross (afterwards Lord Cross).
1892. Lord Kimberley.
1894. H. H. Fowler (afterwards Sir H. Fowler).
1895. Lord George Hamilton.

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A DIGEST OF THE LAW RELATING TO THE GOVERNMENT OF INDIA

CHAPTER I

HISTORICAL INTRODUCTION

Twofold origin of British authority in India.

BRITISH authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India.

In England, the powers and privileges granted by royal charter to the East India Company were confirmed, supplemented, regulated, and curtailed by successive Acts of Parliament, and were finally transferred to the Crown.

In India, concessions granted by, or wrested from, native rulers gradually established the Company and the Crown as territorial sovereigns, in rivalry with other country powers, and finally left the British Crown exercising undivided sovereignty throughout British India, and paramount authority over the subordinate native States.

It is with the development of this power in England that we are at present concerned. The history of that development may be roughly divided into three periods.

Three periods in history of constitutional development.

During the first, or trading, period, which begins with the charter of Elizabeth in 1600, the East India Company are primarily traders. They enjoy important mercantile privileges, and for the purposes of their trade hold sundry factories,

CH. I. mostly on or near the coast[1], but they have not yet assumed the responsibilities of territorial sovereignty. The cession of Burdwan, Midnapore, and Chittagong in 1760 makes them masters of a large tract of territory, but the first period may, perhaps, be most fitly terminated by the grant of the *diwani* in 1765, when the Company become practically sovereigns of Bengal, Behar, and Orissa.

During the second period, from 1765 to 1858, the Company are territorial sovereigns, sharing their sovereignty in diminishing proportions with the Crown, and gradually losing their mercantile privileges and functions. This period may, with reference to its greater portion, be described as the period of double government, using the phrase in the sense in which it was commonly applied to the system abolished by the Act of 1858. The first direct interference of Parliament with the government of India is in 1773, and the Board of Control is established in 1784.

The third and last period, the period of government by the Crown, begins with 1858, when, as an immediate consequence of the Mutiny of 1857, the remaining powers of the East India Company are transferred to the Crown.

In each of these periods a few dates may be selected as convenient landmarks.

Landmarks of first period.

The first period is the period of charters[2]. The charter of 1600 was continued and supplemented by other charters, of which the most important were James I's charter of 1609, Charles II's charter of 1661, James II's charter of 1686, and William III's charters of 1693 and 1698.

The rivalry between the Old or 'London' Company

[1] See the map of India in 1760 in Sir A. Lyall's British Dominion in India, p. 136, and the maps appended to Mr. A. D. Innes' Britain and her Rivals in the Eighteenth Century. The Indian chapters of Mr. Innes' little book give a very clear account of the causes and steps of the progress of British rule in India during the period before the French Revolution. There is a useful sketch of the history of the East India Company in the article under that title in the Dictionary of Political Economy.

[2] The charters of the Company are printed in full in Shaw's Charters of the East India Company (Madras, 1887).

and the New or 'English' Company was terminated by the fusion of the two Companies under Godolphin's Award of 1708.

The wars with the French in Southern India between 1745 and 1761 and the battles of Plassey (1757) and Baxar (1764) in Northern India indicate the transition to the second period.

Landmarks of second period.

The main stages of the second period are marked by Acts of Parliament, occurring with one exception at regular intervals of twenty years.

North's Regulating Act of 1773 (13 Geo. III, c. 63) was followed by the Charter Acts of 1793, 1813, 1833, and 1853. The exceptional Act is Pitt's Act of 1784.

The Regulating Act organized the government of the Bengal Presidency and established the Supreme Court at Calcutta.

The Act of 1784 (24 Geo. III, sess. 2, c. 25) established the Board of Control.

The Charter Act of 1793 (33 Geo. III, c. 52) made no material change in the constitution of the Indian Government, but happened to be contemporaneous with the permanent settlement of Bengal.

The Charter Act of 1813 (53 Geo. III, c. 155) threw open the trade to India, whilst reserving to the Company the monopoly of the China trade.

The Charter Act of 1833 (3 & 4 Will. IV, c. 85) terminated altogether the trading functions of the Company.

The Charter Act of 1853 (16 & 17 Vict. c. 95) took away from the Court of Directors the patronage of posts in their service, and threw open the covenanted civil service to general competition.

Landmarks of third period.

The third period was ushered in by the Government of India Act, 1858 (21 & 22 Vict. c. 106), which declared that India was to be governed by and in the name of Her Majesty. The change was announced in India by the Queen's Proclamation of November 1, 1858. The legisla-

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tive councils and the high courts were established on their present basis by two Acts of 1861 (24 & 25 Vict. cc. 67, 104). Since that date Parliamentary legislation for India has been confined to matters of detail. The East India Company was not formally dissolved until 1874.

Charter of Elizabeth.

The first charter of the East India Company was granted on December 31, 1600. The circumstances under which the grant of this charter arose have been recently described by Sir A. Lyall. The customary trade routes from Europe to the East had been closed by the Turkish Sultan. Another route had been opened by the discovery of the Cape of Good Hope. Thus the trade with the East had been transferred from the cities and states on the Mediterranean to the states on the Atlantic sea-board. Among these latter Portugal took the lead in developing the Indian trade, and when Pope Alexander VI (Roderic Borgia) issued his Bull of May, 1493 [1], dividing the whole undiscovered non-Christian world between Spain and Portugal, it was to Portugal that he awarded India. But since 1580 Portugal had been subject to the Spanish Crown. Holland was at war with Spain, and was endeavouring to wrest from her the monopoly of Eastern trade which had come to her as sovereign of Portugal. During the closing years of the sixteenth century, associations of Dutch merchants had fitted out two great expeditions to Java by the Cape (1595–96, and 1598–99), and were shortly (1602) to be combined into the powerful Dutch East India Company [2]. Protestant England was the political ally of Holland, but her commercial rival, and English merchants were not prepared to see the Indian trade pass wholly into her hands. It was under these circumstances that on September 24, 1599, the merchants of London held a meeting at Founder's Hall, under the Lord Mayor, and resolved to

[1] Printed in Navarrete, Coleccion de los Viages y Descubrimientos, ii. No. 18.

[2] As to the Dutch East India Company, especially in its relation to the Cape, see Lucas, Historical Geography of the British Colonies, vol. iv.

form an association for the purpose of establishing direct trade with India. But negotiations for peace were then in progress at Boulogne, and Queen Elizabeth was unwilling to take a step which would give umbrage to Spain. Hence she delayed for fifteen months to grant the charter for which the London merchants had petitioned. The charter[1] incorporated George, Earl of Cumberland, and 215 knights, aldermen, and burgesses, by the name of the 'Governor and Company of Merchants of London trading with the East Indies.' The Company were to elect annually one governor and twenty-four committees[2], who were to have the direction of the Company's voyages, the provision of shipping and merchandises, the sale of merchandises returned, and the managing of all other things belonging to the Company. Thomas Smith, Alderman of London, and Governor of the Levant Company[3], was to be the first governor[4].

The Company might for fifteen years 'freely traffic and use the trade of merchandise by sea in and by such ways and passages already found out or which hereafter shall be found out and discovered . . . into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the Streights of Magellan.'

During these fifteen years the Company might assemble themselves in any convenient place, 'within our dominions or elsewhere,' and there 'hold court' for the Company and the affairs thereof, and, being so assembled, might 'make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them or the

[1] Printed below, p. 464.

[2] The accent is perhaps to be laid on the last syllable.

[3] In 1609 he was appointed treasurer of the Virginia Company.

[4] For original documents relating to the early voyages of the East India Company and its predecessors in trade, see Calendar of State Papers, Colonial, East Indies, for the sixteenth and seventeenth centuries.

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greater part of them being then and there present, shall seem necessary and convenient for the good government of the same Company, and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages, and for the better advancement and continuance of the said trade and traffick.' They might also impose such pains, punishments, and penalties by imprisonment of body, or by fines and amerciaments, as might seem necessary or convenient for observation of these laws and ordinances. But their laws and punishments were to be reasonable, and not contrary or repugnant to the laws, statutes, or customs of the English realm.

The charter was to last for fifteen years, subject to a power of determination on two years' warning, if the trade did not appear to be profitable to the realm. If otherwise, it might be renewed for a further term of fifteen years.

The Company's right of trading, during the term and within the limits of the charter, was to be exclusive, but they might grant licences to trade. Unauthorized traders were to be liable to forfeiture of their goods, ships, and tackle, and to 'imprisonment and such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient.'

The Company might admit into their body all such apprentices of any member of the Company, and all such servants or factors of the Company, 'and all such other' as to the majority present at a court might be thought fit. If any member, having promised to contribute towards an adventure of the Company, failed to pay his contribution, he might be removed, disenfranchised, and displaced.

Points of constitutional interest in charter of Elizabeth. Constitution of Company.

The points of constitutional interest in the charter of Elizabeth are the constitution of the Company, its privileges, and its legislative powers.

The twenty-four committees to whom, with the governor, is entrusted the direction of the Company's business, are

individuals, not bodies, and are the predecessors of the later directors. Their assembly is in subsequent charters called the court of committees, as distinguished from the court general or general court, which answers to the 'general meeting' of modern companies.

The most noticeable difference between the charter and modern instruments of association of a similar character is the absence of any reference to the capital of the Company and the corresponding qualification and voting powers of members. It appears from the charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money, which were 'set down and written in a book for that purpose,' and failure to pay their contributions to the treasurer within a specified date was to involve 'removal and disenfranchisement' of the defaulters. But the charter does not specify the amount of the several contributions[1], and for all that appears to the contrary each adventurer was to be equally eligible to the office of committee, and to have equal voting power in the general court. The explanation is that the Company belonged at the outset to the simpler and looser form of association to which the City Companies then belonged, and still belong, and which used to be known by the name of 'regulated companies.' The members of such a company were subject to certain common regulations, and were entitled to certain common privileges, but each of them traded on his own separate capital, and there was no joint stock. The trading privileges of the East India Company were reserved to the members, their sons at twenty-one, and their apprentices, factors, and servants. The normal mode of admission to full membership of the Company was through the avenue of apprenticeship or service. But there was power to admit 'others,' doubtless on the terms of their offering suitable contributions to the adventure of the Company.

[1] The total amount subscribed was, in fact, £30,133, and there were 101 subscribers.

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When an association of this kind had obtained valuable concessions and privileges, its natural tendency was to become an extremely close corporation, and to shut its doors to outsiders except on prohibitory terms, and the efforts of those who suffered from the monopoly thus created were directed towards reduction of these terms. Thus by a statute of 1497 the powerful Merchant Adventurers trading with Flanders had been required to reduce to 10 marks (£6 13*s.* 4*d.*) the fine payable on admission to their body. By similar enactments in the seventeenth century the Russia Company and Levant Company were compelled to grant privileges of membership on such easy terms as to render them of merely nominal value, and thus to entitle the companies to what, according to Adam Smith, is the highest eulogium which can be justly bestowed on a regulated company, that of being merely useless. The charter of Elizabeth contains nothing specific as to the terms on which admission to the privileges of the Company might be obtained by an outsider. It had not yet been ascertained how far those privileges would be valuable to members of the Company, and oppressive to its rivals.

Privileges of Company.

The chief privilege of the Company was the exclusive right of trading between geographical limits which were practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other, and which afterwards became widely famous as the limits of the Company's charter. The only restriction imposed on the right of trading within this vast and indefinite area was that the Company were not to 'undertake or address any trade into any country, port, island, haven, city, creek, towns, or places being already in the lawful and actual possession of any such Christian Prince or State as at this present or at any time hereafter shall be in league or amity with us, our heirs and successors, and which doth not or will not accept of such trade.' Subject to this restriction the trade of the older continent was allotted to the adventurers with the same lavish grandeur as that

with which the Pope had granted rights of sovereignty over the new continent, and with which in our own day the continent of Africa has been parcelled out among rival chartered companies. The limits of the English charter of 1600 were identical with the limits of the Dutch charter of 1602, and the two charters may be regarded as the Protestant counterclaims to the monopoly granted by Pope Alexander's Bull[1]. During the first few years of their existence the two Companies carried on their undertakings in co-operation with each other, but they soon began to quarrel, and in 1611 we find the London merchants praying for protection against their Dutch competitors. Projects for amalgamation of the English and Dutch Companies fell through, and during the greater part of the seventeenth century Holland was the most formidable rival and opponent of English trade in the East.

'By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought in question,' the Queen straitly charges and commands her subjects not to infringe the privileges granted by her to the Company, upon pain of forfeitures and other penalties. Nearly a century was to elapse before the Parliament of 1693 formally declared the exercise of this unquestionable prerogative to be illegal as transcending the powers of the Crown. But neither at the beginning nor at the end of the seventeenth century was any doubt entertained as to the expediency, as apart from the constitutionality, of granting a trade monopoly of this description. Such monopolies were in strict accordance with the ideas, and were justified by the circumstances, of the time.

In the seventeenth century the conditions under which private trade is now carried on with the East did not exist. Beyond certain narrow territorial limits international law did

[1] Queen Elizabeth told Mendoza, the ambassador of Philip II, that 'she did not acknowledge the Spaniards to have any title by donation of the Bishop of Rome.'

CH. I. not run, diplomatic relations had no existence[1]. Outside those limits force alone ruled, and trade competition meant war. In the nineteenth century we annex territory for the sake of developing and securing trade. The annexations of the sixteenth century were annexations, not of territory, but of trading grounds. The pressure was the same, the objects were the same, the methods were different. For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. No Western State could afford to support more than one such association without dissipating its strength. The independent trader, or interloper, was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen. It was because the trade monopoly of the East India Company had outlived the conditions out of which it arose that its extinction in the present century was greeted with general and just approval.

Legislative powers of Company.

The powers of making laws and ordinances granted by the charter of Elizabeth did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations. No copies of any laws made under the early charters are known to exist. They would doubtless have consisted mainly of regulations for the guidance of the Company's factors and apprentices. Unless supplemented by judicial and punitive powers, the early legislative powers of the Company could hardly have been made effectual for any further purpose. But they are of historical interest, as the germ out of which the Anglo-Indian codes were ultimately developed. In this connexion they may be usefully compared with the provisions which, twenty-eight years after

[1] The state of things in European waters was not much better. See the description of piracy in the Mediterranean in the seventeenth century in Masson, Histoire du Commerce Français dans le Levant, chap. ii.

the charter of Elizabeth, were granted to the founders of Massachusetts.

Resemblance to Massachusetts Company.

In 1628 Charles I granted a charter to the Governor and Company of the Massachusetts Bay in New England. It created a form of government consisting of a governor, deputy governor, and eighteen assistants, and directed them to hold four times a year a general meeting of the Company to be called the 'great and general Court,' in which general court 'the Governor or deputie Governor, and such of the assistants and freemen of the Company as shall be present shall have full power and authority to choose other persons to be free of the Company and to elect and constitute such officers as they shall think fitte for managing the affairs of the said Governor and Company and to make Lawes and Ordinances for the Good and Welfare of the saide Company and for the Government and Ordering of the said Landes and Plantasion, and the People inhabiting and to inhabit the same, soe as such Lawes and Ordinances be not contrary or repugnant to the Lawes and Statutes of this our realme of England.' The charter of 1628 was replaced in 1691 by another charter, which followed the same general lines, but gave the government of the colony a less commercial and more political character. The main provisions of the charter of 1691 were transferred bodily to the Massachusetts constitution of 1780, which is now in force, and which, as Mr. Bryce remarks[1], profoundly influenced the convention that prepared the federal constitution of the United States in 1787.

Thus from the same germs were developed the independent republic of the West and the dependent empire of the East.

Other English trading companies.

The Massachusetts Company may be taken as the type of the bodies of adventurers who during the early part of the seventeenth century were trading and settling in the newly discovered continent of the West. It may be worth while to glance at the associations of English merchants, who, at the

[1] American Commonwealth, pt. 2, chap. xxxvii. See also Lyall, British Dominion in India, p. 54.

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date of the foundation of the East India Company, were trading towards the East. Of these the most important were the Russia or Muscovy Company and the Levant or Turkey Company [1].

Russia Company.

The foundations of the Russia Company [2] were laid by the discoveries of Richard Chancellor. In 1553–54 they were incorporated by charter of Philip and Mary under the name of 'the Merchants and Adventurers for the discovery of lands not before known or frequented by any English.' They were to be governed by a court consisting of one governor (the first to be Sebastian Cabot) and twenty-eight of the most sad, discreet, and learned of the fellowships, of whom four were to be called consuls, and the others assistants. They were to have liberty to resort, not only to all parts of the dominions of 'our cousin and brother, Lord John Bazilowitz, Emperor of all Russia, but to all other parts not known to our subjects.' And none but such as were free of or licensed by the Company were to frequent the parts aforesaid, under forfeiture of ships and merchandise—a comprehensive monopoly.

In 1566 the adventurers were again incorporated, not by charter, but by Act of Parliament, under the name of 'the fellowship of English Merchants for discovery of new trade [3],' with a monopoly of trade in Russia, and in the countries of Armenia, Media, Hyrcania, Persia, and the Caspian Sea.

In the seventeenth century they were compelled by the Czar of the time to share with the Dutch their trading privileges from the Russian Government, and by an Act of 1698, which reduced their admission fine to £5 [4],

[1] A good account of the great trading companies is given by Bonnassieux, Les Grandes Compagnies de Commerce (Paris, 1892). See also The Early Chartered Companies by Causton and Keene, the article on 'Colonies, Government of, by Companies' in the Dictionary of Political Economy, and the article on 'Chartered Companies' in the Encyclopaedia of the Laws of England.

[2] As to the Russia Company, see the Introduction to Early Voyages to Russia in the publications of the Hakluyt Society.

[3] This is said to have been the first English statute which established an exclusive mercantile corporation.

[4] 10 & 11 Will. III, c. 6.

their doors were thrown open. After this they sank into insignificance.

A faint legal trace of their ancient privileges survives in the extra-territorial character belonging for marriage purposes to the churches and chapels formerly attached to their factories in Russia. Some years ago they existed, perhaps they still exist, as a dining club [1].

Levant Company.

The Levant Company [2] was founded by Queen Elizabeth for the purpose of developing the trade with Turkey under the concessions then recently granted by the Ottoman Porte. Under arrangements made with various Christian powers and known as the Capitulations, foreigners trading or residing in Turkey were withdrawn from Turkish jurisdiction for most civil and criminal purposes. The first of the Capitulations granted to England bears date in the year 1579, and the first charter of the Levant Company was granted two years afterwards, in 1581. This charter was extended in 1593, renewed by James I, confirmed by Charles II, and, like the East India Company's charters, recognized and modified by various Acts of Parliament.

The Levant Company attempted to open an overland trade to the East Indies, and sent merchants from Aleppo to Bagdad and thence down the Persian Gulf. These merchants obtained articles at Lahore and Agra, in Bengal, and at Malacca, and on their return to England brought information of the profits to be acquired by a trade to the East Indies. In 1593 the Levant Company obtained a new charter, empowering them to trade to India overland through the territories of the Grand Signor. Under these circumstances it is not surprising to find members of the Levant Company taking an active part in the promotion of the East India Company. Indeed the latter Company was in a sense the outgrowth of the former. Alderman Thomas Smith, the first Governor of the East India Company, was at the same

[1] MacCulloch, Dictionary of Commerce, 1871 edition.

[2] As to the Levant Company and the Capitulations, see below, p. 416.

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time Governor of the Levant Company, and the adventures of the two Companies were at the outset intimately connected with each other. At the end of the first volume of court minutes of the East India Company are copies of several letters sent to Constantinople by the Levant Company [1].

Had history taken a different course, the Levant Company might have founded on the shores of the Mediterranean an empire built up of fragments of the dominions of the Ottoman Porte, as the East India Company founded on the shores of the Bay of Bengal an empire built up of fragments of the dominions of the Great Mogul. But England was not a Mediterranean power, trade with the East had been deflected from the Mediterranean to the Atlantic, and the causes which had destroyed the Italian merchant states were fatal to the Levant Company. As the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved.

To return to the East India Company.

The separate voyages.

During the first twelve years of its existence, the Company traded on the principle of each subscriber contributing separately to the expense of each voyage, and reaping the whole profits of his subscription. The voyages during these years are therefore known in the annals of the Company as the 'separate voyages.' But, after 1612, the subscribers threw their contributions into a 'joint stock,' and thus converted themselves from a regulated company into a joint-stock company, which however differed widely in its constitution from the joint-stock companies of the present day [2].

James I's charter of 1609.

In the meantime James I had in 1609 renewed the charter of Elizabeth, and made it perpetual, subject to determination after three years' notice on proof of injury

[1] See the Paper on the India Office Records read by Mr. F. C. Danvers before the Society of Arts on January 17, 1890.

[2] See Birdwood, p. 45; Mill, British India, i. 21; and remarks in Macpherson's Annals of Commerce.

to the nation[1]. The provisions of this charter do not, except with regard to its duration, differ in any material respect from those of the charter of Elizabeth.

Beginning of martial law exercisable by Company.

It has been seen that under the charter of Elizabeth the Company had power to make laws and ordinances for the government of factors, masters, mariners, and other officers employed on their voyages, and to punish offenders by fine or imprisonment. This power, was, however, insufficient for the punishment of grosser offences and for the maintenance of discipline on long voyages. Accordingly, the Company were in the habit of procuring for each voyage a commission to the 'general' in command, empowering him to inflict punishments for non-capital offences, such as murder or mutiny, and to put in execution 'our law called martial[2].'

Grant of 1615.

This course was followed until 1615, when, by a Royal grant of December 16, the power of issuing commissions embodying this authority was given to the Company, subject to a proviso requiring the verdict of a jury in the case of capital offences.

Grant of 1623.

By 1623 the increase in the number of the Company's settlements, and the disorderliness of their servants, had drawn attention to the need for further coercive powers. Accordingly King James I, by a grant of February 14, $162\frac{3}{4}$[3], gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the

[1] A beautifully engrossed and illuminated copy of the charter is among the parchment records of the East India Company. See Birdwood, p. 284.

[2] For an example of a sentence of capital punishment under one of these commissions, see Kaye, Administration of East India Company, p. 66. In transactions with natives the Company's servants were nominally subject to the native courts. Rights of extra-mural jurisdiction had not yet been claimed.

[3] Original among parchment records of Company. Copy in Rymer's Foedera, xvii. 450. The double date here and elsewhere indicates a reference to the three months, January, February, March, which according to the Old Style closed the old year, while under the New Style, introduced in 1751 by the Act 24 Geo. II, c. 23, they begin the new year.

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like proviso as to the submission of capital cases to the verdict of a jury.

Contests with Dutch and English rivals.

The history of the Company during the reigns of the first two Stuarts and the period of the Commonwealth is mainly occupied with their contests with Dutch competitors and English rivals.

Massacre of Amboyna.

The massacre of Amboyna (February 16, 162$\frac{3}{3}$) is the turning-point in the rivalry with the Dutch. On the one hand it enlisted the patriotic sympathies of Englishmen at home on behalf of their countrymen in the East. On the other hand it compelled the Company to retire from the Eastern Archipelago, and concentrate their efforts on the peninsula of India.

Courten's Association.

Under Charles I the extensive trading privileges of the Company were seriously limited. Sir William Courten, through the influence of Endymion Porter [1], a gentleman of the bedchamber, obtained from the king a licence to trade to the East Indies independently of the East India Company. His association, which, from a settlement established by it at Assada, in Madagascar, was often spoken of as the Assada Company, was a thorn in the side of the East India Company for many years.

Cromwell's relations to the Company.

Under the Commonwealth the intervention of the Protector was obtained for the settlement of the Company's differences both with their Dutch and with their English competitors. By the Treaty of Westminster in 1654, Cromwell obtained from the Dutch payment of a sum of £85,000 as compensation for the massacre of Amboyna and for the exclusion of the Company from trade with the Spice Islands. Difficulties arose, however, as to the apportionment of this sum among the several joint stocks of which the Company's capital was then composed, and, pending their settlement, Cromwell borrowed £50,000 of the sum for the expenses of the State. He thus anticipated the policy subsequently

[1] Herrick's friend, to whom he dedicated his poem on 'The Country Life.'

adopted by Montagu and his successors of compelling the Company to grant public loans as a price for their privileges.

Cromwell's charter of 1657.

Ultimately the Company obtained from Cromwell in 1657 a charter under which the rump of Courten's Association was united with the East India Company, and the different stocks of the Company were united into a new joint stock[1]. No copy of this charter is known to exist. Perhaps it was considered impolitic after the Restoration to preserve any evidence of favours obtained from the Protector.

The Company after the Restoration.

During the period after the Restoration the fortunes of the Company are centred in the remarkable personality of Sir Josiah Child, and are depicted in the vivid pages of Macaulay. He has described how Child converted the Company from a Whig to a Tory Association, how he induced James II to become a subscriber to its capital, how his policy was temporarily baffled by the Revolution, how vigorously he fought and how lavishly he bribed to counteract the growing influence of the rival English Company.

Marks of royal favour are conspicuous in the charters of the Restoration period.

Charles II's charter of 1661.

The charter granted by Charles II on April 3, 1661, conferred new and important privileges on the Company. Their constitution remained practically unaltered, except that the joint-stock principle was recognized by giving each member one vote for every £500 subscribed by him to the Company's stock. But their powers were materially increased.

They were given 'power and command' over their fortresses, and were authorized to appoint governors and other officers for their government. The governor and council of each factory were empowered 'to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgement accordingly.' And the chief factor and council of any

[1] See the Preface to Shaw's Charters, p. v, and Lyall, British Dominion in India, p. 28.

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place for which there was no governor were empowered to send offenders for punishment, either to a place where there was a governor and council, or to England.

The Company were also empowered to send ships of war, men, or ammunition for the security and defence of their factories and places of trade, and 'to choose commanders and officers over them and to give them power and authority, by commission under their common seal or otherwise, to continue or make peace or war with any people that are not Christians, in any places of their trade, as shall be for the most advantage and benefit of the said Governor and Company, and of their trade.' They were further empowered to erect fortifications, and supply them with provisions and ammunition, duty free, 'as also to transport and carry over such number of men, being willing thereunto, as they shall think fit,' to govern them in a legal and reasonable manner, to punish them for misdemeanour, and to fine them for breach of orders. They might seize unlicensed persons and send them to England, punish persons in their employment for offences, and in case of their appealing against the sentence seize them and send them as prisoners to England, there to receive such condign punishment as the merits of the offenders' cause should require, and the laws of the nation should allow.

Arrangements for administration of justice at Madras in seventeenth century.

With regard to the administration of justice, nothing appears to have been done towards carrying into effect the provisions of the charter of 1661 till the beginning of 1678. Madras was at that time the chief of the Company's settlements in India[1], and the arrangements there for the administration of justice before 1678 appear from Mr. Wheeler's Madras in Olden Times to have been as follows:—

It was the duty of the customer or fourth council, mint master and paymaster, or any two of them, to sit every

[1] The settlement of Madras or Fort St. George had been erected into a Presidency in 1651.

Tuesday and Friday in the choultry[1] to do the common justice of the town, and to take care that the scrivener of the choultry duly registered all sentences in Portuguese, and that an exact register was kept of all alienations or sales of slaves, houses, gardens, boats, ships, &c. The purser-general or paymaster had also to take charge of the concerns of deceased men, and to keep a book for registering wills and inventories. In the same book was to be kept a register of births, christenings, marriages, and burials of all English men and women within the town. The justices would appear to have also acted as coroners.

In 1678 the agent and council at Madras resolved that, under the charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgement accordingly, and it was determined that the governor and council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this high court was not to supersede the justices of the choultry, who were still to hear and decide petty cases.

Grant of Bombay to the Company.

In the meantime the port and island of Bombay, which had, in 1661, been ceded to the British Crown as part of the dower of Catherine of Braganza, were, by a charter of 1669, granted to the East India Company to be held of the Crown, 'as of the Manor of Greenwich in free and common soccage,' for the annual rent of £10.

And by the same charter the Company were authorized to take into their service such of the king's officers and soldiers as should then be on the island, and should be willing to serve them. The officers and men who volunteered their services under this power became the cadets of the Company's '1st European Regiment,' or 'Bombay Fusiliers,' afterwards the 103rd Foot[2].

[1] A Southern India word, meaning a hall, or shed, or loggia, used either as a resting-place or for purposes of business, like the Roman basilica.

[2] Birdwood, Report, p. 222.

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The Company were authorized, through their court of committees, to make laws, orders, ordinances, and constitutions for the good government and otherwise of the port and island and of the inhabitants thereof, and, by their governors and other officers, to exercise judicial authority, and have power and authority of government or command, in the island, and to repel any force which should attempt to inhabit its precincts without licence, or to annoy the inhabitants. Moreover, the principal governor of the island was empowered 'to use and exercise all those powers and authorities, in cases of rebellion, mutiny, or sedition, of refusing to serve in wars, flying to the enemy, forsaking colours or ensigns, or other offences against law, custom, and discipline military, in as large and ample manner, to all intents and purposes whatsoever, as any captain-general of our army by virtue of his office has used and accustomed, and may or might lawfully do.'

The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government is very apparent in these provisions.

Further attributes of sovereignty were soon afterwards conferred.

Charter of 1677 granting powers of coinage.

By a charter of 1677 the Company were empowered to coin money at Bombay to be called by the name of 'rupees, pices, and budjrooks,' or such other names as the Company might think fit. These coins were to be current in the East Indies, but not in England. A mint for the coinage of pagodas had been established at Madras some years before.

Administration of justice at Bombay in seventeenth century.

The commissioners sent from Surat[1] to take possession of Bombay on behalf of the Company made a report in which they requested that a judge-advocate might be appointed, as the people were accustomed to civil law. Apparently, as a temporary measure, two courts of judicature were formed,

[1] Bombay was then subordinate to Surat, where a factory had been established as early as 1612, and where there was a president with a council of eight members.

the inferior court consisting of a Company's civil officer assisted by two native officers, and having limited jurisdiction, and the supreme court consisting of the deputy governor and council, whose decisions were to be final and without appeal, except in cases of the greatest necessity[1].

Charter of 1683 giving power to raise forces and exercise martial law, and establishing Courts of Admiralty.

By a charter of 1683, the Company were given full power to declare and make peace and war with any of the 'heathen nations' being natives of the parts of Asia and America mentioned in the charter, and to 'raise, arm, train, and muster such military forces as to them shall seem requisite and necessary; and to execute and use, within the said plantations, forts, and places, the law called the martial law, for the defence of the said forts, places, and plantations against any foreign invasion or domestic insurrection or rebellion.' But this power was subject to a proviso reserving to the Crown 'the sovereign right, powers, and dominion over all the forts and places of habitation,' and 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon.'

By the same charter the king established a court of judicature, to be held at such place or places as the Company might direct, and to consist of 'one person learned in the civil law, and two assistants,' to be appointed by the Company. The court was to have power to hear and determine all cases of forfeiture of ships or goods trading contrary to the charter, and also all mercantile and maritime cases concerning persons coming to or being in the places aforesaid, and all cases of trespasses, injuries, and wrongs done or committed upon the high seas or in any of the regions, territories, countries or places aforesaid, concerning any persons residing, being, or coming within the limits of the Company's charter. These cases were to be adjudged and determined by the court, according to the rules of equity and good conscience, and according to the laws and customs of merchants, by such procedure as they might direct, and, subject to any such directions as the

[1] Shaw's Charters, Preface, p. ix.

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judges of the court should, in their best judgement and discretion, think meet and just.

The only person learned in the civil law who was sent out to India in pursuance of the charter of 1683 was Dr. John St. John. By a commission from the king, supplemented by a commission from the Company, he was appointed judge of the court at Surat. But he soon became involved in disputes with the governor, Sir John Child, who limited his jurisdiction to maritime cases, and appointed a separate judge for civil actions[1].

At Madras, the president of the council was appointed to supply the place of judge-advocate till one should arrive. But this arrangement caused much dissatisfaction, and it was resolved that, instead of the president's accepting this appointment, the old court of judicature should be continued, and that, until the arrival of a judge-advocate, causes should be heard under it as formerly in accordance with the charter of 1661.

Charter of 1686.

In 1686 James II granted the Company a charter by which he renewed and confirmed their former privileges, and authorized them to appoint 'admirals, vice-admirals, rear-admirals, captains, and other sea officers' in any of the Company's ships within the limits of their charter, with power for their naval officers to raise naval forces, and to exercise and use 'within their ships on the other side of the Cape of Good Hope, in the time of open hostility with some other nation, the law called the law martial for defence of their ships against the enemy.' By the same charter the Company were empowered to coin in their forts any species of money usually coined by native princes, and it was declared that these coins were to be current within the bounds of the charter.

The provisions of the charter of 1683 with respect to the Company's admiralty court were repeated with some modi-

[1] Shaw's Charters, Preface, p. xi. Sir John Child was a brother of Sir Josiah Child.

fications, and under these provisions Sir John Biggs, who had been recorder of Portsmouth, was appointed judge-advocate at Madras.

Establishment of municipality at Madras.

Among the prerogatives of the Crown one of the most important is the power of constituting municipal corporations by royal charter. Therefore it was a signal mark of royal favour when James II, in 1687, delegated to the East India Company the power of establishing by charter a municipality at Madras. The question whether this charter should be passed under the great seal or under the Company's seal was discussed at a cabinet council. The latter course was eventually adopted at the instance of the governor and deputy governor of the Company, and the reasons urged for its adoption are curious and characteristic. The governor expressed his opinion that no persons in India should be employed under immediate commission from His Majesty, 'because the wind of extraordinary honour in their heads would probably render them so haughty and overbearing that the Company would be forced to remove them.' He was evidently thinking of the recent differences between Sir John Child and Dr. St. John, and was alive to the dangers arising from an independent judiciary which in the next century were to bring about the conflicts between Warren Hastings and the Calcutta supreme court.

Charter of 1687.

Accordingly the charter of 1687, which established a municipality and mayor's court at Madras, proceeds from the Company, and not from the Crown. It recites 'the approbation of the king, declared in His Majesty's Cabinet Council[1] the eleventh day of this instant December,' and then goes on to constitute a municipality according to the approved English type. The municipal corporation is to consist of a mayor, twelve aldermen, and sixty or more burgesses. The mayor and aldermen are to have power to

[1] This formal recognition of the existence of a cabinet council is of constitutional interest. But of course the cabinet council of 1687 was a very different thing from the cabinet council of the nineteenth century.

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Nor are the ornamental parts of municipal life forgotten. 'For the greater solemnity and to attract respect and reverence from the common people,' the mayor is to 'always have carried before him when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length,' and the mayor and aldermen may 'always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country.' The burgesses are, on these occasions, to wear white 'pelong,' or other silk gowns. Moreover, the mayor and aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols[1] born over them when they

[1] Umbrellas and parasols(?). Yule and Burnell's Glossary does not explain.

walk or ride abroad on these necessary occasions within the limits of the said corporation, and, when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and aldermen of London, having their horses decently furnished with saddles, bridles, and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St. George.'

Company's resolution of 1689.

The charter of 1687 was the last of the Stuart charters affecting the East India Company. The constitutional history of the Company after the Restoration of 1689 may be appropriately ushered in by a reference to the resolution which was passed by them in that year.

'The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by His Majesty's royal charter, fit only to trade where nobody of power thinks it their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade.'

This famous resolution, which was doubtless inspired, if not penned, by Sir Josiah Child, announces in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and preludes the annexations of the next century[1].

Controversies after Revolution of 1688.

The Revolution of 1688 dealt a severe blow to the policy of Sir Josiah Child, and gave proportionate encouragement to his rivals. They organized themselves in an association which was popularly known as the New Company, and commenced an active war against the Old Company both in the City and in Parliament. The contending parties pre-

[1] See Birdwood, p. 230.

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sented petitions to the Parliament of 1691, and the House of Commons passed two resolutions, first, that the trade of the East Indies was beneficial to the nation, and secondly, that the trade with the East Indies would be best carried on by a joint-stock company possessed of extensive privileges. The practical question, therefore, was, not whether the trade to the East Indies should be abolished, or should be thrown open, but whether the monopoly of the trade should be left in the hands of Sir Josiah Child and his handful of supporters. On this question the majority of the Commons wished to effect a compromise—to retain the Old Company, but to remodel it and to incorporate it with the New Company. Resolutions were accordingly carried for increasing the capital of the Old Company, and for limiting the amount of the stock which might be held by a single proprietor. A Bill based on these resolutions was introduced and read a second time, but was dropped in consequence of the refusal of Child to accept the terms offered to him. Thereupon the House of Commons requested the king to give the Old Company the three years' warning in pursuance of which their privileges might be determined.

Two years of controversy followed. The situation of the Old Company was critical. By inadvertently omitting to pay a tax which had been recently imposed on joint-stock companies, they had forfeited their charter and might at any time find themselves deprived of their privileges without any notice at all. At length, by means of profuse bribes, Child obtained an order requiring the Attorney-General to draw up a charter regranting to the Old Company its former privileges, but only on the condition that the Company should submit to further regulations substantially in accordance with those sanctioned by the House of Commons in 1691. However, even these terms were considered insufficient by the opponents of the Company, who now raised the constitutional question whether the Crown could grant a monopoly of trade without the authority of

Parliament[1]. This question, having been argued before the Privy Council, was finally decided in favour of the Company, and an order was passed that the charter should be sealed.

Charters of 1693 and 1694.

Accordingly the charter of October 7, 1693, confirms the former charter of the Company, but is expressed to be revocable in the event of the Company failing to submit to such further regulations as might be imposed on them within a year. These regulations were embodied in two supplemental charters dated November 11, 1693, and September 28, 1694. By the first of these charters the capital of the Company is increased by the addition of £744,000. No person is to subscribe more than £10,000. Each subscriber is to have one vote for each £1,000 stock held by him, up to £10,000 but no more. The governor and deputy governor are to be qualified by holding £4,000 stock, and each committee by holding £1,000 stock. The dividends are to be made in money alone. Books are to be kept for recording transfers of stock, and are to be open to public inspection. The joint stock is to continue for twenty-one years and no longer.

The charter of 1694 provides that the governor and deputy governor are not to continue in office for more than two years, that eight new committees are to be chosen each year, and that a general court must be called within eight days on request by six members holding £1,000 stock each. The three charters are to be revocable after three years' warning, if not found profitable to the realm.

By a charter of 1698 the provisions as to voting powers and qualification were modified. The qualification for a single vote was reduced to £500, and no single member could give more than five votes. The qualification for being a committee was raised to £2,000.

[1] The question had been previously raised in the great case of *The East India Company* v. *Sandys* (1683-85), in which the Company brought an action against Mr. Sandys for trading to the East Indies without a licence, and the Lord Chief Justice (Jeffreys) gave judgement for the plaintiffs. See the report in 10 State Trials, 371.

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The affair of the *Redbridge* and its results.

In the meantime, however, the validity of the monopoly renewed by the charter of 1693 had been successfully assailed. Immediately after obtaining a renewal of their charter the directors used their powers to effect the detention of a ship called the *Redbridge*, which was lying in the Thames and was believed to be bound for countries beyond the Cape of Good Hope. The legality of the detention was questioned, and the matter was brought up in Parliament. And on January 11, 169$\frac{3}{4}$, the House of Commons passed a resolution 'that all subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament.'

'It has ever since been held,' says Macaulay, 'to be the sound doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world.' It is true that the trade to the East Indies, though theoretically thrown open by this resolution, remained practically closed. The Company's agents in the East Indies were instructed to pay no regard to the resolutions of the House of Commons, and to show no mercy to interlopers. But the constitutional point was finally settled. The question whether the trading privileges of the East India Company should be continued was removed from the council chamber to Parliament, and the period of control by Act of Parliament over the affairs of the Company began.

Incorporation of English Company.

The first Act of Parliament for regulating the trade to the East Indies was passed in 1698. The New Company had continued their attacks on the monopoly of the Old Company, a monopoly which had now been declared illegal, and they found a powerful champion in Montagu, the Chancellor of the Exchequer. The Old Company offered, in return for a monopoly secured by law, a loan of £700,000 to the State. But Montagu wanted more money than the Old Company could advance. He also wanted to set up a new company constituted in accordance with the views of

his adherents. Unfortunately these adherents were divided in their views. Most of them were in favour of a joint-stock company. But some preferred a regulated company after the model of the Levant Company. The plan which Montagu ultimately devised was extremely intricate, but its general features cannot be more clearly described than in the language of Macaulay: 'He wanted two millions to extricate the State from its financial embarrassments. That sum he proposed to raise by a loan at 8 per cent. The lenders might be either individuals or corporations, but they were all, individuals and corporations, to be united in a new corporation, which was to be called the General Society. Every member of the General Society, whether individual or corporation, might trade separately with India to an extent not exceeding the amount which that member had advanced to the Government. But all the members or any of them might, if they so thought fit, give up the privilege of trading separately, and unite themselves under a Royal Charter for the purpose of trading in common. Thus the General Society was, by its original constitution, a regulated company; but it was provided that either the whole Society or any part of it might become a joint-stock company.'

This arrangement was embodied in an Act and two charters. The Act (9 & 10 Will. III, c. 44) authorized the Crown to borrow two millions on the security of taxes on salt, and stamped vellum, parchment, and paper, and to incorporate the subscribers to the loan by the cumbrous name of the 'General Society entitled to the advantages given by an Act of Parliament for advancing a sum not exceeding two millions for the service of the Crown of England.' The Act follows closely the lines of that by which, four years before, Montagu had established the Bank of England in consideration of a loan of £1,200,000. In each case the loan bears interest at the rate of 8 per cent., and is secured on the proceeds of a special tax or set of taxes. In each case the subscribers to the loan are incorporated

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and obtain special privileges. The system was an advance on that under which bodies of merchants had obtained their privileges by means of presents to the king or bribes to his ministers, and was destined to receive much development in the next generation. The plan of raising special loans on the security of special taxes has since been superseded by the National Debt and the Consolidated Fund. But the debt to the Bank of England still remains separate, and retains some of the features originally imprinted on it by the legislation of Montagu.

Of the charters granted under the Act of 1698, the first[1] incorporated the General Society as a regulated company, whilst the second[2] incorporated most of the subscribers to the General Society as a joint-stock company, under the name of 'The English Company trading to the East Indies.' The constitution of the English Company was formed on the same general lines as that of the Old or London Company, but the members of their governing body were called directors instead of 'committees.'

The New Company were given the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent rights of the Old Company until September 29, 1701. The New Company, like the Old Company, were authorized to make by-laws and ordinances, to appoint governors, with power to raise and train military forces, and to establish courts of judicature. They were also directed to maintain ministers of religion at their factories in India, and to take a chaplain in every ship of 500 tons. The ministers were to learn the Portuguese language and to 'apply themselves to learn the native language of the country where they shall reside, the better to enable them to instruct the Gentoos that shall be the servants or slaves of the same Company or of their agents, in the Protestant religion.' Schoolmasters were also to be provided.

Union of Old and New Companies.

It soon appeared that the Old Company had, to use a

[1] Charter of September 3, 1698. [2] Charter of September 5, 1698.

modern phrase, 'captured' the New Company. They had subscribed £315,000 towards the capital of two millions authorized by the Act of 1698. They had thus acquired a material interest in their rivals' concern, and, at the same time, they were in possession of the field. They had the capital and plant indispensable for the East India trade, and they retained concurrent privileges of trading. They soon showed their strength by obtaining a private Act of Parliament (11 & 12 Will. III, c. 4) which continued them as a trading corporation until repayment of the whole loan of two millions.

The situation was impossible; the privileges nominally obtained by the New Company were of no real value to them; and a coalition between the two Companies was the only practicable solution of the difficulties which had been created by the Act and charters of 1698.

The coalition was effected in 1702, through the intervention of Lord Godolphin, and by means of an Indenture Tripartite[1] to which Queen Anne and the two Companies were parties, and which embodied a scheme for equalizing the capital of the two Companies and for combining their stocks. The Old Company were to maintain their separate existence for seven years, but the trade of the two Companies was to be carried on jointly, in the name of the English Company, but for the common benefit of both, under the direction of twenty-four managers, twelve to be selected by each Company. At the end of the seven years the Old Company were to surrender their charters. The New or English Company were to continue their trade in accordance with the provisions of the charter of 1698, but were to change their name for that of 'The United Company of Merchants of England trading to the East Indies.'

A deed of the same date, by which the 'dead stock' of the two Companies was conveyed to trustees, contains an interesting catalogue of their Indian possessions at that time[1].

[1] Original at India Office. Copy in Shaw's Charters.

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Difficulties arose in carrying out the arrangement of 1702, and it became necessary to apply for the assistance of Parliament, which was given on the usual terms. By an Act of 1707 [1] the English Company were required to advance to the Crown a further loan of £1,200,000 without interest, a transaction which was equivalent to reducing the rate of interest on the total loan of £3,200,000 from 8 to 5 per cent. In consideration of this advance the exclusive privileges of the Company were continued to 1726, and Lord Godolphin was empowered to settle the differences still remaining between the London Company and the English Company. Lord Godolphin's Award was given in 1708, and in 1709 Queen Anne accepted a surrender of the London Company's charters and thus terminated their separate existence. The original charter of the New or English Company thus came to be, in point of law, the root of all the powers and privileges of the United Company, subject to the changes made by statute. Henceforth down to 1833 (see 3 & 4 Will. IV, c. 85, s. 111) the Company bear their new name of 'The United Company of Merchants of England trading to the East Indies.'

Period between 1708 and 1765.

For constitutional purposes the half-century which followed the union of the two Companies may be passed over very lightly. An Act of 1711 [2] provided that the privileges of the United Company were not to be determined by the repayment of the loan of two millions.

Extension of Company's charter.

The exclusive privileges of the United Company were extended for further terms by Acts of 1730 [3] and 1744 [4]. The price paid for the first extension was an advance to the State of £200,000 without interest, and the reduction of the rate of interest on the previous loan from 5 per cent. to 4 per cent. By another Act of 1730 [5] the security for the loan by the Company was transferred from the special taxes on which it had been previously charged to the 'aggregate fund,' the predecessor of the modern Consolidated Fund.

[1] 6 Anne, c. 71. [2] 10 Anne, c. 35. [3] 3 Geo. II, c. 14.
[4] 17 Geo. II, c. 17. [5] 3 Geo. III, c. 20.

The price of the second extension, which was to 1780, was a further loan of more than a million at 3 per cent. By an Act of 1750[1] the interest on the previous loan of £3,200,000 was reduced, first to 3½ per cent., and then to 3 per cent.

Provisions against interlopers.

Successive Acts were passed for increasing the stringency of the provisions against interlopers[2] and for penalizing any attempt to support the rival Ostend Company[3].

Judicial charters of 1726 and 1753.

In 1726 a charter was granted establishing or reconstituting municipalities at Madras, Bombay, and Calcutta, and setting up or remodelling mayor's and other courts at each of these places. At each place the mayor and aldermen were to constitute a mayor's court with civil jurisdiction, subject to an appeal to the governor or president in council, and a further appeal in more important cases to the king in council. The mayor's court now also gave probates and exercised testamentary jurisdiction. The governor or presi-

[1] 23 Geo. II, c. 22.

[2] 1718, 5 Geo. I, c. 21; 1720, 7 Geo. I, Stat. 1, c. 21; 1722, 9 Geo. I, c. 26; 1732, 5 Geo. II, c. 29. See the article on 'Interlopers' in the Dictionary of Political Economy. For the career of a typical interloper see the account of Thomas Pitt, afterwards Governor of Madras, and grandfather of the elder William Pitt, given in vol. iii. of Yule's edition of the Diary of William Hedges. The relations between interlopers and the East India Company in the preceding century are well illustrated by Skinner's case, which arose on a petition presented to Charles II soon after the Restoration. According to the statement signed by the counsel of Skinner there was a general liberty of trade to the East Indies in 1657 (under the Protectorate), and he in that year sent a trading ship there; but the Company's agents at Bantam, under pretence of a debt due to the Company, seized his ship and goods, assaulted him in his warehouse at Jamba in the island of Sumatra, and dispossessed him of the warehouse and of a little island called Barella. After various ineffectual attempts by the Crown to induce the Company to pay compensation, the case was, in 1665, referred by the king in council to the twelve judges, with the question whether Skinner could have full relief in any court of law. The answer was that the king's ordinary courts of justice could give relief in respect of the wrong to person and goods, but not in respect of the house and island. The House of Lords then resolved to relieve Skinner, but these proceedings gave rise to a serious conflict between the House of Lords and the House of Commons. See Hargrave's Preface to Hale's Jurisdiction of the House of Lords, p. cv.

[3] Charter granted by the Emperor Charles VI in 1722, but withdrawn in 1725. See Mill, British India, bk. iv. ch. 1.

CH. I. dent and the five seniors of the council were to be justices of the peace, and were to hold quarter sessions four times in the year, with jurisdiction over all offences except high treason. At the same time the Company were authorized, as in previous charters, to appoint generals and other military officers, with power to exercise the inhabitants in arms, to repel force by force, and to exercise martial law in time of war.

The capture of Madras by the French in 1746 having destroyed the continuity of the municipal corporation at that place, the charter of 1726 was surrendered and a fresh charter was granted in 1753.

The charter of 1753 expressly excepted from the jurisdiction of the mayor's court all suits and actions between the Indian natives only, and directed that these suits and actions should be determined among themselves, unless both parties submitted them to the determination of the mayor's courts. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court [1].

The charters of 1726 and 1753 have an important bearing on the question as to the precise date at which the English criminal law was introduced at the presidency towns. This question is discussed by Sir James Stephen with reference to the legality of Nuncomar's conviction for forgery; the point being whether the English statute of 1728 (2 Geo. II, c. 25) was or was not in force in Calcutta at the time of Nuncomar's trial. Sir James Stephen inclines to the opinion that English criminal law was originally introduced to some extent by the charter of 1661, but that the later charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority whereby it was reintroduced on three successive occasions, as it stood at the three dates mentioned. If so, the statute of 1728 would have been in force in

[1] Morley's Digest, Introduction, p. clxix.

Calcutta in 1770 when Nuncomar's offence was alleged to have been committed, and at the time of his trial in 1775. But high judicial authorities in India have maintained a different view. According to their view British statute law was first given to Calcutta by the charter establishing the mayor's court in 1726, and British statutes passed after the date of that charter did not apply to India, unless expressly or by necessary implication extended to it [1]. Since the passing of the Indian Penal Code the question has ceased to be of practical importance.

Mutiny Act and Articles of War for Indian Forces.

In 1744 war broke out between England and France, and in 1746 their hostilities extended to India. These events led to the establishment of the Company's Indian Army. The first establishment of that army may, according to Sir George Chesney [2], be considered to date from the year 1748, 'when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement during the course of the war which had broken out, four years previously, between France and England. At the same time a small European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the Company. An officer, Major Lawrence, was appointed by a commission from the Company to command these forces in India.' During the Company's earliest wars its army consisted mainly, for fighting purposes, of Europeans.

It has been seen that by successive charters the Company had been authorized to raise troops and appoint officers. But the more extensive scale on which the military operations of the Company were now conducted made necessary further legislation for the maintenance of military discipline. An

[1] Morley's Digest, Introduction, pp. xi, xxiii, below p. 387.

[2] Indian Polity (3rd ed.), ch. xii, which contains an interesting sketch of the rise and development of the Indian Army. The nucleus of a European force had been formed at Bombay in 1668, supra, p. 19.

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Act of 1754[1] laid down for the Indian forces of the Company provisions corresponding to those embodied in the annual English Mutiny Acts. It imposed penalties for mutiny, desertion, and similar offences, when committed by officers or soldiers in the Company's service. The Court of Directors might, in pursuance of an authority from the king, empower their president and council and their commanders-in-chief to hold courts-martial for the trial and punishment of military offences. The king was also empowered to make articles of war for the better government of the Company's forces. The same Act contained a provision, repeated in subsequent Acts, which made oppression and other offences committed by the Company's presidents or councils cognizable and punishable in England. The Act of 1754 was amended by another Act passed in 1760 (1 Geo. III, c. 14).

Charters of 1757 and 1758 as to booty and cession of territory.

The warlike operations which were carried on by the East India Company in Bengal at the beginning of the second half of the eighteenth century, and which culminated in Clive's victory at Plassey, led to the grant of two further charters to the Company.

A charter of 1757 recited that the Nabob of Bengal had taken from the Company, without just or lawful pretence and contrary to good faith and amity, the town and settlement of Calcutta, and goods and valuable commodities belonging to the Company and to many persons trading or residing within the limits of the settlement, and that the officers and agents of the Company at Fort St. George had concerted a plan of operations with Vice-Admiral Watson and others, the commanders of our fleet employed in those parts, for regaining the town and settlement and the goods and commodities, and obtaining adequate satisfaction for their losses; and that it had been agreed between the officers of the Company, on the one part, and the vice-admiral and commanders of the fleet, on the other part, assembled in a council

[1] 27 Geo. II, c. 9.

of war, that one moiety of all plunder and booty 'which shall be taken from the Moors' should be set apart for the use of the captors, and that the other moiety should be deposited till the pleasure of the Crown should be known. The charter went on to grant this reserved moiety to the Company, except any part thereof which might have been taken from any of the king's subjects. Any part so taken was to be returned to the owners on payment of salvage.

A charter of 1758, after reciting that powers of making peace and war and maintaining military forces had been granted to the Company by previous charters, and that many troubles had of late years arisen in the East Indies, and the Company had been obliged at very great expense to carry out a war in those parts against the French and likewise against the Nabob of Bengal and other princes or Governments in India, and that some of their possessions had been taken from them and since retaken, and forces had been maintained, raised, and paid by the Company in conjunction with some of the royal ships of war and forces, and that other territories or districts, goods, merchandises, and effects had been acquired and taken from some of the princes or Governments in India at variance with the Company by the ships and forces of the Company alone, went on to grant to the Company all such booty or plunder, ships, vessels, goods, merchandises, treasure, and other things as had since the charter of 1757 been taken or seized, *or should thereafter be taken*, from any of the enemies of the Company or any of the king's enemies in the East Indies by any ships or forces of the Company employed by them or on their behalf within their limits of trade. But this was only to apply to booty taken during hostilities begun and carried on in order to right and recompense the Company upon the goods, estate, or people of those parts from whom they should sustain or have just and well-grounded cause to fear any injury, loss, or damage, or upon any people who should interrupt, wrong, or injure them in their trade within the limits of the

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charters, or should in a hostile manner invade or attempt to weaken or destroy the settlements of the Company or to injure the king's subjects or others trading or residing within the Company's settlements or in any manner under the king's protection within the limits of the Company. The booty must also have been taken in wars or hostilities or expeditions begun, carried on, and completed by the forces raised and paid by the Company alone or by the ships employed at their sole expense. And there was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the king's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company. There was also an exception for goods taken from the king's subjects, which were to be restored on payment of reasonable salvage. These provisions, though they gave rise to difficult questions at various subsequent times, have now become obsolete. But the charter contained a further power which is still of practical importance. It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabob of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European power without the special licence and approbation of the Crown. This power was relied on in a recent case[1] as the foundation, or one of the foundations, of the power of the Government of India to cede territory.

The Company as territorial sovereign.

The year 1765 marks a turning-point in Anglo-Indian history, and may be treated as commencing the period of

[1] *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1.

territorial sovereignty by the East India Company. The successes of Clive and Lawrence in the struggle between the English and French and their respective allies had extinguished French influence in the south of India. The victories of Plassey[1] and Baxar[1] made the Company masters of the north-eastern provinces of the peninsula. In 1760 Clive returned from Bengal to England. In 1765, after five years of confusion, he went back to Calcutta as Governor and Commander-in-Chief of Bengal, armed with extraordinary powers. His administration of eighteen months was one of the most memorable in Indian history[2]. The beginning of our Indian rule dates from the second governorship of Clive, as our military supremacy had dated from his victory at Plassey. Clive's main object was to obtain the substance, though not the name, of territorial power, under the fiction of a grant from the Mogul Emperor.

This object was obtained by the grant from Shah Alam of the Diwani or fiscal administration of Bengal, Behar, and Orissa[3]. Grant of the Diwani.

The criminal jurisdiction in the provinces was still left with the puppet Nawab, who was maintained at Moorshedabad, whilst the Company were to receive the revenues and to maintain the army. But the actual collection of the revenues still remained until 1772 in the hands of native officials.

Thus a system of dual government was established, under which the Company, whilst assuming complete control over the revenues of the country, and full power of maintaining or disbanding its military forces, left in other hands the responsibility for maintaining law and order through the agency of courts of law.

[1] Plassey (Clive), June 23, 1757; Baxar (Munro), October 23, 1764.

[2] See Lecky, England in the Eighteenth Century, ch. xii; Hunter, article 'India' in Imperial Gazetteer, pp. 386–387.

[3] The grant is dated August 17, 1765, and is printed below, p. 490. The 'Orissa' of the grant corresponds to what is now the district of Midnapur, and is not to be confused with the modern Orissa, which was not acquired until 1800. See Chesney, Indian Polity (3rd ed.), p. 33.

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The great events of 1765 produced immediate results in England. The eyes of the proprietors of the Company were dazzled by golden visions. On the dispatch bearing the grant of the Diwani being read to the Court of Proprietors they began to clamour for an increase of dividend, and, in spite of the Company's debts and the opposition of the directors, they insisted on raising the dividend in 1766 from 6 to 10 per cent., and in 1767 to 12½ per cent.

At the same time the public mind was startled by the enormous fortunes which 'Nabobs' were bringing home, and the public conscience was disturbed by rumours of the unscrupulous modes in which these fortunes had been amassed. Constitutional questions were also raised as to the right of a trading company to acquire on its own account powers of territorial sovereignty[1]. The intervention of Parliament was imperatively demanded.

Parliamentary inquiry of November, 1766.

In November, 1766, the House of Commons appointed a committee to inquire into and publish the state of the Company's revenues and other affairs, its relations to the Indian princes, the expenses the Government had incurred on its own account, and the correspondence between the Company and its servants in India.

Legislation of 1767.

In 1767 Parliament passed five Acts with reference to Indian affairs. The first disqualified a member of any company for voting at a general court unless he had held his qualification for six months, and prohibited the making of dividends except at a half-yearly or quarterly court[2]. Although applying in terms to all companies, the Act was immediately directed at the East India Company, and its object was to check the trafficking in votes and other scandals which had recently disgraced their proceedings. The second Act[3] prohibited the East India Company from making any dividend except in pursuance of a resolution passed at a general court after due notice, and directly overruled the

[1] For the arguments on this question, see Lecky, ch. xii.

[2] 7 Geo. III, c. 48. [3] 7 Geo. III, c. 49.

recent resolution of the Company by forbidding them to declare any dividend in excess of 10 per cent. per annum until the next session of Parliament. The third and fourth Acts[1] embodied the terms of a bargain to which the Company had been compelled to consent. The Company were required to pay into the Exchequer an annual sum of £400,000 for two years from February 1, 1767, and in consideration of this payment were allowed to retain their territorial acquisitions and revenues for the same period[2]. At the same time certain duties on tea were reduced on an undertaking by the Company to indemnify the Exchequer against any loss arising from the reduction. Thus the State claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories.

In 1768 the restraint on the dividend was continued for another year[3], and in 1769 a new agreement was made by Parliament with the East India Company for five years, during which time the Company were guaranteed the territorial revenues, but were bound to pay an annuity of £400,000, and to export a specified quantity of British goods. They were at liberty to increase their dividends during that time to 12½ per cent. provided the increase did not exceed 1 per cent. If, however, the dividend should fall below 10 per cent. the sum to be paid to the Government was to be proportionately reduced. If the finances of the Company enabled them to pay off some specified debts, they were to lend some money to the public at 2 per cent.[4]

These arrangements were obviously based on the assumption that the Company were making enormous profits, out of which they could afford to pay, not only liberal dividends to their proprietors, but a heavy tribute to the State. The assumption was entirely false. Whilst the servants of the

[1] 7 Geo. III, cc. 56, 57.

[2] This was apparently the first direct recognition by Parliament of the territorial acquisitions of the Company. See *Damodhar Gordhan* v. *Deoram Kanji* the *Bhaunagar* case), L. R. 1 App. Cas. 332, 342.

[3] 8 Geo. III, c. 1.

[4] 9 Geo. III, c. 24.

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Company were amassing colossal fortunes, the Company itself was advancing by rapid strides to bankruptcy. 'Its debts were already estimated at more than six millions sterling. It supported an army of about 30,000 men. It paid about one million sterling a year in the form of tributes, pensions, and compensations to the emperor, the Nabob of Bengal, and other great native personages. Its incessant wars, though they had hitherto been always successful, were always expensive, and a large proportion of the wealth which should have passed into the general exchequer, was still diverted to the private accounts of its servants[1].' Two great calamities hastened the crisis. In the south of India, Hyder Ali harried the Carnatic, defeated the English forces, and dictated peace on his own terms in 1769. In the north, the great famine of 1770 swept away more than a third of the inhabitants of Bengal.

Pecuniary embarrassments in 1772.

Yet the directors went on declaring dividends at the rates of 12 and 12½ per cent. At last the crash came. In the spring session of 1772 the Company had endeavoured to initiate legislation for the regulation of their affairs. But their Bill was thrown out on the second reading, and in its place a select committee of inquiry was appointed by the House of Commons. In June, 1772, Parliament was prorogued, and in July the directors were obliged to confess that the sum required for the necessary payments of the next three months was deficient to the extent of £1,293,000. In August the chairman and deputy chairman waited on Lord North to inform him that nothing short of a loan of a million from the public could save the Company from ruin[2].

In November, 1772, Parliament met again, and its first step was to appoint a new committee with instructions to hold a secret inquiry into the Company's affairs. This committee presented its first report with unexpected rapidity, and on its recommendation Parliament in December, 1772, passed an Act prohibiting the directors from sending out to

[1] Lecky, iv. 273.

[2] Ibid. ch. xii.

India a commission of supervision on the ground that the Company would be unable to bear the expense[1].

Legislation of 1773.

In 1773 the Company came to Parliament for pecuniary assistance, and Lord North's Government took advantage of the situation to introduce extensive alterations into the system of governing the Company's Indian possessions[2].

In spite of vehement opposition, two Acts were passed through Parliament by enormous majorities. By one of these Acts[3] the ministers met the financial embarrassments of the Company by a loan of £1,400,000 at 4 per cent., and agreed to forgo the Company's debt of £400,000 till this loan had been discharged. The Company were restricted from declaring any dividend above 6 per cent. till the new loan had been discharged, and above 7 per cent. until the bond debt was reduced to £1,500,000. They were obliged to submit their accounts every half-year to the Treasury, they were restricted from accepting bills drawn by their servants in India for above £300,000 a year, and they were required to export to the British settlements within their limits British goods of a specified value.

The Regulating Act of 1773.

The other Act was that commonly known as the Regulating Act[4]. To understand the object and effect of its provisions brief reference must be made to the constitution of the Company at the time when it was passed.

At home the Company were still governed in accordance

[1] 13 Geo. III, c. 9.

[2] The history of the East India Company tends to show that whenever a chartered company undertakes territorial sovereignty on an extensive scale the Government is soon compelled to accept financial responsibility for its proceedings, and to exercise direct control over its actions. The career of the East India Company as a territorial power may be treated as having begun in 1765, when it acquired the financial administration of the provinces of Bengal, Behar, and Orissa. Within seven years it was applying to Parliament for financial assistance. In 1773 its Indian operations were placed directly under the control of a governor-general appointed by the Crown, and in 1784 the Court of Directors in England were made directly subordinate to the Board of Control, that is, to a minister of the Crown.

[3] 13 Geo. III, c. 64.

[4] 13 Geo. III, c. 63.

CH. I. with the charter of 1698, subject to a few modifications of detail made by the legislation of 1767. There was a Court of Directors and a General Court of Proprietors. Every holder of £500 stock had a vote in the Court of Proprietors, but the possession of £2,000 stock was the qualification for a director. The directors were twenty-four in number, and the whole of them were re-elected every year [1].

In India each of the three presidencies was under a president or governor and council, appointed by commission of the Company, and consisting of its superior servants. The numbers of the council varied [2], and some of its members were often absent from the presidency town, being chiefs of subordinate factories in the interior of the country. All power was lodged in the president and council jointly, and nothing could be transacted except by a majority of votes. So unworkable had the council become as an instrument of government, that in Bengal Clive had been compelled to delegate its functions to a select committee.

The presidencies were independent of each other. The Government of each was absolute within its own limits, and responsible only to the Company in England.

The civil and military servants of the Company were classified, beginning from the lowest rank, as writers, factors, senior factors, and merchants. Promotion was usually by seniority. Their salaries were extremely small [3], but they made enormous profits by trading on their own account, and by money drawn from extortions and bribes. The select committee of 1773 published an account of such sums as had been proved and acknowledged to have been distributed by the princes and other natives of Bengal from the year 1757 to 1766, both included. They amounted to £5,940,987,

[1] Mill, bk. iv. ch. 1. [2] They were usually from twelve to sixteen.

[3] In the early part of the eighteenth century a writer, after five years' residence in India, received £10 a year, and the salaries of the higher ranks were on the same scale. Thus a member of council had £80 a year. When Thomas Pitt was appointed Governor of Madras in 1698 he received £300 a year for salary and allowances, and £100 for outfit.

exclusive of the grant made to Clive after the battle of Plassey. Clive, during his second governorship, made great efforts to put down the abuses of private trade, bribery, and extortion, and endeavoured to provide more legitimate remunerations for the higher classes of the Company's civil and military servants by assigning to them specific shares in the profits derived from the salt monopoly. According to his estimates the profits from this source of a commissioner or colonel would be at least £7,000 a year; those of a factor or major, £2,000 [1].

At the presidency towns, civil justice was administered in the mayor's courts and courts of request, criminal justice by the justices in petty and quarter sessions. In 1772 Warren Hastings became Governor of Bengal, and took steps for organizing the administration of justice in the interior of that province. In the previous year the Court of Directors had resolved to assert in a more active form the powers given them by the grant of the Diwani in 1765, and in a letter of instructions to the president and council at Fort William had announced their resolution to 'stand forth as diwan,' and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues [2]. In pursuance of these instructions the Court of Directors appointed a committee, consisting of the Governor of Bengal and four members of council, and these drew up a report, comprising a plan for the more effective collection of the revenue and the administration of justice. This plan was adopted by the Government on August 21, 1772, and many of its rules were long preserved in the Bengal Code of Regulations [3].

[1] Lecky, iv. 266, 270.

[2] Letter of August 28, 1771; Mill, bk. v. ch. 1.

[3] The office of 'diwan' implied, not merely the collection of the revenue, but the administration of civil justice. The 'nizamut' comprised the right of arming and commanding the troops, and the management of the whole of the police of the country, as well as the administration of criminal justice. Morley, Digest, p. xxxi. See a fuller account of Warren Hastings' Plan, ibid. p. xxxiv.

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In pursuance of this plan, a board of revenue was created, consisting of the president and members of the council, and the treasury was removed from Moorshedabad to Calcutta. The supervisors of revenue became collectors, and with them were associated native officers, styled diwans. Courts were established in each collectorship, one styled the Diwani, a civil court, and the other the Faujdari, a criminal court. Over the former the collector presided in his quality of king's diwan. In the criminal court the kazi and mufti of the district sat to expound the Mahomedan law. Superior courts were established at the chief seat of government, called the Sadr Diwani Adalat and the Sadr Nizamat Adalat. These courts theoretically derived their jurisdiction and authority, not from the British Crown, but from the native Government in whose name the Company acted as administrators of revenue. They were Company's courts, not king's courts.

Provisions of Regulating Act.

By the Regulating Act of 1773 the qualification to vote in the Court of Proprietors was raised from £500 to £1,000, and restricted to those who had held their stock for twelve months. The directors, instead of being annually elected, were to sit for four years, a quarter of the number being annually renewed.

For the government of the Presidency of Fort William in Bengal, a governor-general and four counsellors were appointed, and the Act declared that the whole civil and military government of this presidency, and also the ordinary management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, should, during such time as the territorial acquisitions and revenues remained in the possession of the Company, be vested in the governor-general and council of the Presidency of Fort William, in like manner as they were or at any time theretofore might have been exercised by the president and council or select committee in the said kingdoms. The avoidance of any attempt to define, otherwise than by

reference to existing facts, the nature or extent of the authority claimed or exercised by the Crown over the Company in the new territorial acquisitions is very noticeable, and is characteristic of English legislation.

The first governor-general and counsellors were named in the Act. They were to hold office for five years[1], and were not to be removable in the meantime, except by the king on the representation of the Court of Directors. A casual vacancy in the office of governor-general during these five years was to be supplied by the senior member of council. A casual vacancy in the office of member of council was during the same time to be filled by the Court of Directors with the consent of the Crown. At the end of the five years the patronage was to be vested in the Company. The governor-general and council were to be bound by the votes of a majority of those present at their meetings, and in the case of an equal division the governor-general was to have a casting vote.

Warren Hastings, who had been appointed Governor of Bengal in 1772, was to be the first governor-general. The first members of his council were to be General Clavering, Colonel Monson, Mr. Barwell, and Mr. Francis.

The supremacy of the Bengal Presidency over the other presidencies was definitely declared. The governor-general and council were to have power of superintending and controlling the government and management of the presidencies of Madras, Bombay, and Bencoolen[2], so far and in so much

[1] It is believed that this temporary enactment is the origin of the custom under which the tenure of the more important offices in India, such as those of governor-general, governor, lieutenant-governor, and member of council, is limited to five years. The limitation is not imposed by statute or by the instrument of appointment, and rests only on custom.

[2] Bencoolen, otherwise Fort Marlborough, is in Sumatra. It was founded by the English in 1686, and was given to the Dutch by the London Treaty, March 11, 1824, in exchange for establishments on the continent of India and for the town and fort of Malacca and its dependencies, which were handed over to the East India Company by 5 Geo. IV, c. 108.

CH. I. as that it should not be lawful for any Government of the minor presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or powers, or for negotiating or concluding any treaty with any such prince or power without the previous consent of the governor-general and council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in cases where special orders had been received from the Company[1]. A president and a council offending against these provisions might be suspended by order of the governor-general and council. The governors of the minor presidencies were to obey the order of the governor-general and council, and constantly and dutifully to transmit to them advice and intelligence of all transactions and matters relating to the government, revenues, or interest of the Company.

Provisions followed for regulating the relations of the governor-general and his council to the Court of Directors, and of the directors to the Crown. The governor-general and council were to obey the orders of the Court of Directors, and keep them constantly informed of all matters relating to the interest of the Company. The directors were, within fourteen days after receiving letters or advices from the governor-general and council, to transmit to the Treasury copies of all parts relating to the management of the Company's revenue, and to transmit to a secretary of state copies of all parts relating to the civil or military affairs and government of the Company.

Important changes were made in the arrangements for the administration of justice in Bengal. The Crown was empowered to establish by charter a supreme court of judicature at Fort William, consisting of a chief justice and three other

[1] This was the first assertion of Parliamentary control over the treaty relations of the Company. See Lee-Warner, Protected Princes of India, p. 44.

judges, who were to be barristers of five years' standing, and were to be appointed by the Crown. The supreme court was empowered to exercise civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers with such reasonable salaries as should be approved by the governor-general and council, and to establish such rules of procedure and do such other things as might be found necessary for the administration of justice and the execution of the powers given by the charter. The court was declared to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William and the factories subordinate thereto. Its jurisdiction was declared to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or any of them, under the protection of the United Company. And it was to have 'full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar, and Orissa, and any suit, action, or complaint against any person employed by or in the service of the Company or of any of His Majesty's subjects.'

But on this jurisdiction two important limitations were imposed.

First, the court was not to be competent to hear or determine any indictment or information against the governor-general or any of his council for any offence, not being treason or felony[1], alleged to have been committed in Bengal, Behar, or Orissa. And the governor-general and members of his council were not to be liable to be arrested or imprisoned in any action, suit, or proceeding in the supreme court[2].

[1] Could it then try the governor-general for treason or felony?

[2] The saving appears to be limited to civil proceedings. It would exempt against arrest on mesne process.

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Then, with respect to proceedings in which natives of the country were concerned, it was provided that the court should hear and determine 'any suits or actions whatsoever of any of His Majesty's subjects against any inhabitant of India residing in any of the said kingdoms or provinces of Bengal, Behar, or Orissa,' on any contract in writing where the cause of action exceeded 500 rupees, and where the said inhabitant had agreed in the contract that, in case of dispute, the matter should be heard and determined in the supreme court. Such suits or actions might be brought in the first instance before the supreme court, or by appeal from any of the courts established in the provinces.

This authority, though conferred in positive, not negative, terms, appears to exclude by implication civil jurisdiction in suits by British subjects against 'inhabitants' of the country, except by consent of the defendant, and is silent as to jurisdiction in civil suits by 'inhabitants' against British subjects, or against other 'inhabitants.'

An appeal against the supreme court was to lie to the king in council, subject to conditions to be fixed by the charter.

All offences of which the supreme court had cognizance were to be tried by a jury of British subjects resident in Calcutta.

The governor-general and council and the chief justice and other judges of the supreme court were to act as justices of the peace, and for that purpose to hold quarter sessions.

Liberal salaries were provided out of the Company's revenues for the governor-general and his council and the judges of the supreme court. The governor-general was to have annually £25,000, each member of his council £10,000, the chief justice £8,000, and each puisne judge £6,000.

The governor-general and council were to have powers 'to make and issue such rules, ordinances, and regulations for the good order and civil government' of the Company's

settlement at Fort William, and the subordinate factories and places, as should be deemed just and reasonable, and should not be repugnant to the laws of the realm, and to set, impose, inflict, and levy reasonable fines and forfeitures for their breach.

But these rules and regulations were not to be valid until duly registered and published in the supreme court, with the assent and approbation of the court, and they might, in effect, be set aside by the king in council. A copy of them was to be kept affixed conspicuously in the India House, and copies were also to be sent to a secretary of state.

The remaining provisions of the Act were aimed at the most flagrant of the abuses to which public attention had been recently directed. The governor-general and members of his council, and the chief justice and judges of the supreme court, were prohibited from receiving presents or being concerned in any transactions by way of traffic, except the trade and commerce of the Company.

No person holding or exercising any civil or military office under the Crown or the Company in the East Indies was to receive directly or indirectly any present or reward from any of the Indian princes or powers, or their ministers or agents, or any of the nations of Asia. Any offender against this provision was to forfeit double the amount received, and might be removed to England. There was an exception for the professional remuneration of counsellors at law, physicians, surgeons, and chaplains.

No collector, supervisor, or any other of His Majesty's subjects employed or concerned in the collection of revenues or administration of justice in the provinces of Bengal, Behar, and Orissa was, directly or indirectly, to be concerned in the buying or selling of goods by way of trade, or to intermeddle with or be concerned in the inland trade in salt, betel-nut, tobacco or rice, except on the Company's account. No subject of His Majesty in the East Indies was to lend money at a higher rate of interest than 12 per cent. per annum.

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Servants of the Company prosecuted for breach of public trust, or for embezzlement of public money or stores, or for defrauding the Company, might, on conviction before the supreme court at Calcutta or any other court of judicature in India, be fined and imprisoned, and sent to England. If a servant of the Company was dismissed for misbehaviour, he was not to be restored without the assent of three-fourths both of the directors and of the proprietors.

If any governor-general, governor, member of council, judge of the supreme court, or any other person for the time being employed in the service of the Company, committed any offence against the Act, or was guilty of any crime, misdemeanour, or offence against any of His Majesty's subjects, or any of the inhabitants of India, he might be tried and punished by the Court of King's Bench in England.

Charter of 1774 constituting supreme court at Calcutta.

The charter of justice authorized by the Regulating Act was dated March 26, 1774, and remained the foundation of the jurisdiction exercised by the supreme court at Calcutta until the establishment of the present high court under the Act of 1861[1]. The first chief justice was Sir Elijah Impey. His three colleagues were Chambers, Lemaistre, and Hyde[2].

Difficulties arising out of Regulating Act.

Warren Hastings retained the office of governor-general until 1785, when he was succeeded temporarily by Sir John Macpherson, and, eventually, by Lord Cornwallis. His appointment, which was originally for a term of five years, was continued by successive Acts of Parliament. His administration was distracted by conflicts between himself and his colleagues on the supreme council, and between the supreme council and the supreme court, conflicts traceable to the defective provisions of the Regulating Act.

Difficulties in the council.

Of Hastings' four colleagues, one, Barwell, was an experienced servant of the Company, and was in India at the time of his appointment. The other three, Clavering, Monson,

[1] Copy printed in Morley's Digest, ii. 549. For summary, see Nuncomar and Impey, i. 18.

[2] See Nuncomar and Impey, ii. 2, 35.

and Francis, were sent out from England, and arrived in Calcutta with the judges of the new supreme court [1].

Barwell usually supported Hastings. Francis, Clavering, and Monson usually opposed him. Whilst they acted together, Hastings was in a minority, and found his policy thwarted and his decisions overruled. In 1776 he was reduced to such depression that he gave his agents in England a conditional authority to tender his resignation. The Court of Directors accepted his resignation on this authority, and took steps to supply his place. But in the meantime Clavering died (November, 1776) and Hastings was able, by means of his casting vote, to maintain his supremacy in the council. He withdrew his authority to his English agent, and obtained from the supreme court a decision that his resignation was invalid [2]. These proceedings possibly occasioned the provision which was contained in the Charter Act of 1793, was repeated in the Act of 1833, and is still law, that the resignation of a governor-general is not valid unless signified by a formal deed [3].

Difficulties between supreme council and supreme court.

The provisions of the Act of 1773 are obscure and defective as to the nature and extent of the authority exerciseable by the governor-general and his council, as to the jurisdiction of the supreme court, and as to the relation between the Bengal Government and the court. The ambiguities of the Act arose partly from the necessities of the case, partly from a deliberate avoidance of new and difficult questions on constitutional law. The situation created in Bengal by the grant of the Diwani in 1765, and recognized by the legislation of 1773, resembled what in the language of modern international law is called a protectorate. The country had not been definitely annexed [4]; the authority of

[1] For the character of Hastings and his colleagues, see Nuncomar and Impey, ch. iii.

[2] Mill, iv. 14–16.

[3] See 3 & 4 Will. IV, c. 85, s. 79. Digest, s. 82.

[4] On May 10, 1773, the House of Commons, on the motion of General Burgoyne, passed two resolutions, (1) that all acquisitions made by

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In the latter half of the nineteenth century we have become familiar with situations of this kind, and have devised appropriate formulae for dealing with them. In such cases an Order in Council is issued under the Foreign Jurisdiction Act, establishing consular and other courts of civil and criminal jurisdiction, and providing them with codes of procedure and of substantive law, which are sometimes derived from Anglo-Indian sources. The jurisdiction is to be exercised and the law is to be applied in cases affecting British subjects, and, so far as is consistent with international law and comity, in cases affecting European or American foreigners. But the natives of the country

military force or by treaty with foreign powers do of right belong to the State; (2) that to appropriate such acquisitions to private use is illegal. But the nature and extent of the sovereignty exercised by the Company was for a long time doubtful. See *Mayor of Lyons* v. *East India Company*, 3 State Trials, new series, 647, 707; 1 Moore P. C. 176.

are, so far as is compatible with regard to principles of humanity, left in enjoyment of their own laws and customs. If a company has been established for carrying on trade or business, its charter is so framed as to reserve the supremacy and prerogatives of the Crown. In this way a rough-and-ready system of government is provided, which would often fail to stand the application of severe legal tests, but which supplies an effectual mode of maintaining some degree of order in uncivilized or semi-civilized countries[1].

But in 1773 both the theory and the experience were lacking, which are requisite for adapting English institutions to new and foreign circumstances. For want of such experience England was destined to lose her colonies in the Western hemisphere. For want of it mistakes were committed which imperilled the empire she was building up in the East. The Regulating Act provided insufficient guidance as to points on which both the Company and the supreme court were likely to go astray; and the charter by which it was supplemented did not go far to supply its deficiencies. The language of both instruments was vague and inaccurate. They left unsettled questions of the gravest importance. The Company was vested with supreme administrative and military authority. The court was vested with supreme judicial authority. Which of the two authorities was to be paramount? The court was avowedly established for the purpose of controlling the actions of the Company's servants, and preventing the exercise of oppression against natives of the country. How far could it extend its controlling power without sapping the foundations of civil authority? The members of the

[1] See the Orders in Council under the successive Foreign Jurisdiction Acts, printed in vol. iii of the Statutory Rules and Orders Revised (published by the Stationery Office), and the charters granted to the Imperial British East Africa Company (Hertslet, Map of Africa by Treaty, i. 118), to the Royal British South Africa Company (ibid. i. 274), and to the Royal Niger Company (ibid. i. 446). See also below, ch. vii, and the article 'Colonies, Government of, by Companies,' in the Dictionary of Political Economy.

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Both the omissions from the Act and its express provisions were such as to afford room for unfortunate arguments and differences of opinion.

What law was the supreme court to administer? The Act was silent. Apparently it was the unregenerate English law, insular, technical, formless, tempered in its application to English circumstances by the quibbles of judges and the obstinacy of juries, capable of being an instrument of the most monstrous injustice when administered in an atmosphere different from that in which it had grown up.

To whom was this law to be administered? To British subjects and to persons in the employment of the Company. But whom did the first class include? Probably only the class now known as European British subjects, and probably not the native 'inhabitants of India' residing in the three provinces, except such of them as were resident in the town of Calcutta. But the point was by no means clear[1].

What constituted employment by the Company? Was a native landowner farming revenues so employed? And in doubtful cases on whom lay the burden of proving exemption from or subjection to the jurisdiction?

These were a few of the questions raised by the Act and charter, and they inevitably led to serious conflicts between the council and the court.

In the controversies which followed there were, as Sir James Stephen observes[2], three main heads of difference between the supreme council and the supreme court.

These were, first, the claims of the court to exercise jurisdiction over the whole native population, to the extent

[1] See *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 443.

[2] Nuncomar and Impey, ii. 237. It is perhaps needless to say that this book contains the fullest and best account of the legal and constitutional questions arising under the Regulating Act.

of making them plead to the jurisdiction if a writ was served on them. The quarrel on this point culminated in what was known as the Cossijurah case, in which the sheriff and his officers, when attempting to execute a writ against a zemindar, were driven off by a company of sepoys acting under the orders of the council. The action of the council was not disapproved by the authorities in England, and thus this contest ended practically in the victory of the council and the defeat of the court.

The second question was as to the jurisdiction of the court over the English and native officers of the Company employed in the collection of the revenues for corrupt or oppressive acts done by them in their official capacity. This jurisdiction the Company were compelled by the express provisions of the Regulating Act to admit, though its exercise caused them much dissatisfaction.

The third question was as to the right of the supreme court to try actions against the judicial officers of the Company for acts done in the execution of what they believed, or said they believed, to be their legal duty. This question arose in the famous Patna case, in which the supreme court gave judgement with heavy damages to a native plaintiff in an action against officers of the Patna provincial council, acting in its judicial capacity. Impey's judgement in this case was made one of the grounds of impeachment against him, but is forcibly defended by Sir James Stephen against the criticisms of Mill and others, as being not only technically sound, but substantially just. Hastings endeavoured to remove the friction between the supreme court and the country courts by appointing Impey judge of the court of Sadr Diwani Adalat, and thus vesting in him the appellate and revisional control over the country courts which had been nominally vested in, but never exercised by, the supreme court. Had he succeeded, he would have anticipated the arrangements under which, some eighty years later, the court of Sadr Diwani Adalat and the supreme court were fused into the high court. But

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Impey compromised himself by drawing a large salary from his new office in addition to that which he drew as chief justice, and his acceptance of a post tenable at the pleasure of the Company was held to be incompatible with the independent position which he was intended to occupy as chief justice of the supreme court.

Amending Act of 1781.

In the year 1781 a Parliamentary inquiry was held into the administration of justice in Bengal, and an amending Act of that year [1] settled some of the questions arising out of the Act of 1773.

The governor-general and council of Bengal were not to be subject, jointly or severally, to the jurisdiction of the supreme court for anything counselled, ordered, or done by them in their public capacity. But this exemption did not apply to orders affecting British subjects [2].

The supreme court was not to have or exercise any jurisdiction in matters concerning the revenue, or concerning any act done in the collection thereof, according to the usage and practice of the country, or the regulations of the governor-general and council [3].

No person was to be subject to the jurisdiction of the supreme court by reason only of his being a 'landowner, landholder, or farmer of land or of land rent, or for receiving a payment or pension in lieu of any title to, or ancient possession of, land or land rent, or for receiving any compensation or share of profits for collecting of rents payable to the public out of such lands or districts as are actually farmed by himself, or those who are his under-tenants in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof or by reason of his becoming security for the payment of rent.'

No person was, by reason of his being employed by the Company, or by the governor-general and council, or by a native or descendant of a native of Great Britain, to

[1] 21 Geo. III, c. 70. [2] See Digest, s. 106. [3] Ibid. s. 101.

become subject to the jurisdiction of the supreme court, in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between parties, except in actions for wrongs or trespasses, or in civil suits by agreement of the parties.

Registers were to be kept showing the names, &c., of natives employed by the Company.

The supreme court was, however, to have jurisdiction in all manner of actions and suits against all and singular the inhabitants of Calcutta 'provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentus by the laws and usages of Gentus; and where only one of the parties shall be a Mahomedan or Gentu by the laws and usages of the defendant [1].'

In order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, were to be preserved to them within their families, nor was any act done in consequence of the rule and law of caste, respecting the members of the said families only, to be held and adjudged a crime, although it might not be held justifiable by the laws of England.

Rules and forms for the execution of process in the supreme court were to be accommodated to the religion and manners of the natives, and sent to the Secretary of State, for approval by the king.

[1] This proviso was taken from Warren Hastings' plan for the administration of justice prepared and adopted in 1772, when the Company first 'stood forth as diwan.' It is interesting as a recognition of the personal law which played so important a part during the break-up of the Roman empire, but has, in the West, been gradually superseded by territorial law. As to the effect of this and similar enactments, see Digest, s. 108 and note thereon.

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The appellate jurisdiction of the governor-general and council in country cases was recognized and confirmed in cautiously general terms. 'Whereas the governor-general and council, or some committee thereof or appointed thereby, do determine on appeals and references from the country or provincial courts in civil cases,' 'the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record; and the judgements therein given shall be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards.' The same court was further declared to be a court to hear and determine on all offences, abuses, and extortions committed in the collection of revenue, and on severities used beyond what shall appear to the said court customary or necessary to the case, and to punish the same according to sound discretion, provided the said punishment does not extend to death, or maiming, or perpetual imprisonment[1].

No action for wrong or injury was to lie in the supreme court against any person whatsoever exercising any judicial office in the country courts for any judgement, decree, or order of the court, nor against any person for any act done by or in virtue of the order of the court.

The defendants in the Patna case were to be released from prison on the governor-general and council giving security (which they were required to do) for the damages recovered in the action against them; and were to be at liberty to appeal to the king in council against the judgement, although the time for appealing under the charter had expired.

The decision of Parliament, as expressed in the Act of 1781, was substantially in favour of the council and against the court on all points. Sir James Stephen argues that the

[1] See Harington's Analysis, i. 22. But it seems very doubtful whether the council or any of the council had in fact ever exercised jurisdiction as a court of Sadr Diwani Adalat. See Nuncomar and Impey, ii. 189.

enactment of this Act 'shows clearly that the supreme court correctly interpreted the law as it stood[1].' But this construction seems to go too far. A legislative reversal of a judicial decision shows that, in the opinion of the legislature, the decision is not substantially just, but must not necessarily be construed as an admission that the decision is technically correct. It is often more convenient to cut a knot by legislation than to attempt its solution by the dilatory and expensive way of appeal.

The Act of 1781 contained a further provision which was of great importance in the history of Indian legislation. It empowered the governor-general and council 'from time to time to frame regulations for the provincial courts and councils.' Copies of these regulations were to be sent to the Court of Directors and to the Secretary of State. They might be disallowed or amended by the king in council, but were to remain in force unless disallowed within two years.

On assuming the active duties of revenue authority in Bengal in 1772, the president and council had made general regulations for the administration of justice in the country by the establishment of civil and criminal courts. And by the Regulating Act of 1773 the governor-general and council were expressly empowered to make rules, ordinances, and regulations. But regulations made under this power had to be registered in the supreme court[2], with the consent and approbation of that court. In 1780 the governor-general and council made regulations, in addition to those of 1772, for the more effectual and regular administration of justice in the provincial civil courts, and in 1781 they issued a revised code superseding all former regulations. If these regulations were made under the power given by the Act of 1773 they ought to have been registered. But it does

[1] Nuncomar and Impey, ii. 192.

[2] As French laws had to be registered by the *Parlement*, and as Acts of Parliament affecting the Channel Islands still have to be registered by the Royal Courts.

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not appear that they were so registered, and after the passing of the Act of 1781 the governor-general and council preferred to act under the powers which enabled them to legislate without any reference to the supreme court. However, notwithstanding the limited purpose for which the powers of 1781 were given, it was under those powers that most of the regulation laws for Bengal purported to be framed. Regulations so made did not require registration or approval by the supreme court. But it was for some time doubtful whether they were binding on that court[1].

Further legislation of 1781.

The Act of 1781 for defining the powers of the supreme court was not the only legislation of that year affecting the East India Company. The Company had by 1778 duly repaid their loan of £1,400,000 from the Exchequer, and they subsequently reduced the bond debt to the limits prescribed by an Act of that year[2]. By an Act passed in 1781[3], the Company were required to pay a single sum of £400,000 to the public in discharge of all claims to a share in their territorial revenues up to March 1 in that year, and their former privileges were extended until three years' notice after March 1, 1791. By the same Act they were authorized to pay a dividend of 8 per cent. out of their clear profits, but three-fourths of the remainder were to go as a tribute to the public.

By way of repayment of the military expenses incurred by the State on their behalf, the Company were required to pay two lacs of rupees annually for each regiment of 1,000 men sent to India at the Company's desire. The Act further

[1] See Cowell's Tagore Law Lectures, 1872, and *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 408. The power of legislation was recognized and extended in 1797 by 37 Geo. III, c. 142, s. 8. See below, p. 74.

[2] 19 Geo. III, c. 61.

[3] 21 Geo. III, c. 65. The Company were unable to meet the payments required by this Act, and successive Acts had to be passed for extending the terms fixed for payment (22 Geo. III, c. 51; 23 Geo. III, cc. 36, 83; 24 Geo. III, sess. 1, c. 3).

authorized the Company to enlist soldiers[1], and punish deserters, and prohibited British subjects from residing more than ten miles from any of the Company's principal settlements without a special licence.

Parliamentary inquiries of 1781.

Two Parliamentary committees on Indian affairs were appointed in the year 1781. The object of the first, of which Burke was the most prominent member, was to consider the administration of justice in India. Its first fruits were the passing of the Act, to which reference has been made above, for further defining the powers of the supreme court. But it continued to sit for many years and presented several reports, some written by Burke himself. The other committee, which sat in secret, and of which Dundas was chairman, was instructed to inquire into the cause of the recent war in the Carnatic and the state of the British government on the coast. This committee did not publish its report until 1782, by which time Lord North's Government had been driven out of office by the disastrous results of the American war, and had been succeeded by the second Rockingham ministry. The reports of both committees were highly adverse to the system of administration in India, and to the persons responsible for that administration, and led to the passing of resolutions by the House of Commons requiring the recall of Hastings and Impey, and declaring that the powers given by the Act of 1773 to the governor-general and council ought to be more distinctly ascertained. But the Court of Proprietors of the Company persisted in retaining Hastings in office in defiance both of their directors and of the House of Commons, and no steps were taken for further legislation until after the famous coalition ministry of Fox and North had come into office. Soon after this event, Dundas, who was now in opposition, introduced a Bill which empowered the king to recall the

[1] This was the first Act giving Parliamentary sanction to the raising of European troops by the Company. Clode, Military Forces of the Crown, i. 269.

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principal servants of the Company, and invested the Governor-General of Bengal with power which was little short of absolute. But a measure introduced by a member of the opposition had no chance of passing, and the Government were compelled to take up the question themselves.

Fox's East India Bill.

It was under these circumstances that Fox introduced his famous East India Bill of 1783. His measure would have completely altered the constitution of the East India Company. It was clear that the existing distribution of powers between the State, the Court of Directors, and the Court of Proprietors at home, and the Company's servants abroad, was wholly unsatisfactory, and led to anarchy and confusion. Dundas had proposed to alter it by making the governor-general practically independent, and vesting him with absolute power. Fox adopted the opposite course of increasing the control of the State over the Company at home and its officers abroad. His Bill proposed to substitute for the existing Courts of Directors and Proprietors a new body, consisting of seven commissioners, who were to be named in the Act, were during four years to be irremovable, except upon an address from either House of Parliament, and were to have an absolute power of placing or displacing all persons in the service of the Company, and of ordering and administering the territories, revenues, and commerce of India. Any vacancy in the body was to be filled by the king. A second or subordinate body, consisting of nine assistant directors chosen by the legislature from among the largest proprietors, was to be formed for the purpose of managing the details of commerce. For the first five years they were given the same security of tenure as the seven commissioners, but vacancies in their body were to be filled by the Court of Proprietors.

The events which followed the introduction of Fox's East India Bill belong rather to English than to Indian constitutional history. Everybody is supposed to know how the Bill was denounced by Pitt and Thurlow as a monstrous device for vesting the whole government and patronage of India in

Fox and his Whig satellites; how, after having been carried through the House of Commons by triumphant majorities, it was defeated in the House of Lords through the direct intervention of the king; how George III contumeliously drove Fox and North out of office after the defeat of their measure; how Pitt, at the age of twenty-five, ventured to assume office with a small minority at his back, and how his courage, skill, and determination, and the blunders of his opponents, converted that minority into a majority at the general election of 1784.

Pitt's Act of 1784.

Like other ministers, Pitt found himself compelled to introduce and defend when in office measures which he had denounced when in opposition. The chief ground of attack on Fox's Bill was its wholesale transfer of patronage from the Company to nominees of the Crown. Pitt steered clear of this rock of offence. He also avoided the appearance of radically altering the constitution of the Company. But his measure was based on the same substantial principle as that of his predecessor and rival, the principle of placing the Company in direct and permanent subordination to a body representing the British Government.

The Act of 1784[1] begins by establishing a board of six commissioners, who were formally styled the 'Commissioners for the Affairs of India' but were popularly known as the Board of Control. They were to consist of the Chancellor of the Exchequer and one of the secretaries of state for the time being, and of four other Privy Councillors, appointed by the king, and holding office during pleasure. There was to be a quorum of three, and the president was to have a casting vote. They were unpaid, and had no patronage, but were empowered 'to superintend, direct, and control, all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British

[1] 24 Geo. III, sess. 2, c. 25. Almost the whole of this Act has been repealed, but many of its provisions were re-enacted in the subsequent Acts of 1793, 1813, and 1833.

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territorial possessions in the East Indies.' They were to have access to all papers and instruments of the Company, and to be furnished with such extracts or copies as they might require. The directors were required to deliver to the Board of Control copies of all minutes, orders, and other proceedings of the Company, and of all dispatches sent or received by the directors or any of their committees, and to pay due obedience to, and be bound by, all orders and directions of the Board, touching the civil or military government and revenues of India. The Board might approve, disapprove, or modify the dispatches proposed to be sent by the directors, might require the directors to send out the dispatches as modified, and in case of neglect or delay, might require their own orders to be sent out without waiting for the concurrence of the directors.

A committee of secrecy, consisting of not more than three members, was to be formed out of the directors, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit these orders to India, without informing the other directors [1].

The Court of Proprietors lost its chief governing faculty, for it was deprived of the power of revoking or modifying any proceeding of the Court of Directors which had received the approval of the Board of Control [2].

These provisions related to the Government of India at home. Modifications were also made in the governing bodies of the different presidencies in India.

The number of members of the governor-general's council was reduced to three, of whom the commander-in-chief of the Company's forces in India was to be one and to have precedence next to the governor-general.

The Government of each of the Presidencies of Madras and Bombay was to consist of a governor and three counsellors,

[1] See Digest, s. 14.

[2] s. 29. The Court of Proprietors had recently overruled the resolution of the Court of Directors for the recall of Warren Hastings.

of whom the commander-in-chief in the presidency was to be one, unless the commander-in-chief of the Company's forces in India happened to be in the presidency, in which case he was to take the place of the local commander-in-chief. The governor-general or governor was to have a casting vote.

The governor-general, governors, commander-in-chief, and members of council were to be appointed by the Court of Directors. They, and any other person holding office under the Company in India, might be removed from office either by the Crown or by the directors. Only covenanted servants of the Company were to be qualified to be members of council. Power was given to make provisional and temporary appointments. Resignation of the office of governor-general, governor, commander-in-chief, or member of council was not to be valid unless signified in writing[1].

The control of the governor-general and council over the government of the minor presidencies was enlarged, and was declared to extend to 'all such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in time of war.'

A similar control over the military and political operations of the governor-general and council was reserved to the Court of Directors. 'Whereas to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation,' the governor-general and his council were not, without the express authority of the Court of Directors, or of the secret committee, to declare war, or commence hostilities, or enter into any treaty for making war, against any of the country princes or States in India, or any treaty for guaranteeing the possession of any country prince or State, except where hostilities had actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in

[1] s. 28. See Digest, s. 82. This was probably enacted in consequence of the circumstances attending Hastings' resignation of office.

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India, or against some of the princes or States who were dependent thereon, or whose territories were guaranteed by any existing treaty [1].

The provisions of the Act of 1773 for the punishment of offences committed by British subjects in India were repeated and strengthened. Thus the receipt of presents by persons in the employment of the Company or the Crown was to be deemed extortion, and punishable as such, and there was an extraordinary provision requiring the servants of the Company, under heavy penalties, to declare truly on oath the amount of property they had brought from India.

All British subjects were declared to be amenable to all courts of competent jurisdiction in India or in England for acts done in Native States, as if the act had been done in British territory [2]. The Company were not to release or compound any sentence or judgement of a competent court against any of their servants, or to restore any such servant to office after he had been dismissed in pursuance of a judicial sentence. The governor-general was empowered to issue his warrant for taking into custody any person suspected of carrying on illicit correspondence with any native prince or other person having authority in India [3].

A special court, consisting of three judges, four peers, and six members of the House of Commons, was constituted for the trial in England of offences committed in India [4].

The Company were required to take into consideration their

[1] s. 34. This enactment with its recital was substantially reproduced by a section of the Act of 1793 (33 Geo. III, c. 52, s. 42) which still remains unrepealed. See Digest, s. 48.

[2] s. 44. Re-enacted by 33 Geo. III, c. 52, s. 67. See Digest, s. 119.

[3] s. 53. This section was re-enacted in substance by 33 Geo. III, c. 52, ss. 45, 46. See Digest, s. 120.

[4] ss. 66-80. The elaborate enactments constituting the court and regulating its procedure were amended by an Act of 1786 (26 Geo. III, c. 57), and still remain on the Statute Book, but appear never to have been put in force. 'In 149 B.C., on the proposal of Lucius Calpurnius Piso, a standing Senatorial Commission (*quaestio ordinaria*) was instituted to try in judicial form the complaints of the provincials regarding the extortions of their Roman magistrates.' Mommsen, 3, 73.

civil and military establishments in India, and to give orders 'for every practicable retrenchment and reduction,' and numerous internal regulations, several of which had been proposed by Fox, were made for Indian administration. Thus, promotion was to be as a rule by seniority, writers and cadets were to be between the ages of fifteen and twenty-two when sent out, and servants of the Company who had been five years in England were not to be capable of appointment to an Indian post, unless they could show that their residence in England was due to ill health. CH. I.

The double government established by Pitt's Act of 1784, with its cumbrous and dilatory procedure and its elaborate system of checks and counter-checks, though modified in details, remained substantially in force until 1858. In practice the power vested in the Board of Control was exercised by the senior commissioner, other than the Chancellor of the Exchequer or Secretary of State. He became known as the President of the Board of Control, and occupied a position in the Government of the day corresponding to some extent to that of the modern Secretary of State for India. But the Board of Directors, though placed in complete subordination to the Board of Control, retained their rights of patronage and their powers of revision, and were thus left no unsubstantial share in the home direction of Indian affairs [1].

Legislation of 1786.

The first important amendments of Pitt's Act were made in 1786. In that year Lord Cornwallis [2] was appointed governor-general, and he made it a condition of his accepting office that his powers should be enlarged. Accordingly an Act was passed which empowered the governor-general in special cases to override the majority of his council and act on his own responsibility [3], and enabled the offices of governor-

[1] As to the practical working of the system at the close of the eighteenth century, see Kaye's Administration of the East India Company, p. 129.

[2] 'The first of the new dynasty of Parliamentary Governors-General.' Lyall, British Dominion in India, p. 218.

[3] See Digest, s. 44.

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general and commander-in-chief to be united in the same person [1].

By another Act of the same session the provision requiring the approbation of the king for the choice of governor-general was repealed. But as the Crown still retained the power of recall this repeal was not of much practical importance [2].

A third Act [3] repealed the provisions requiring servants of the Company to disclose the amount of property brought home by them, and amended the constitution and procedure of the special court under the Act of 1784. It also declared (s. 29) that the criminal jurisdiction of the supreme court at Calcutta was to extend to all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade, and (s. 30) that the governor or president and council of Fort St. George, in their courts of oyer and terminer and gaol delivery, and the mayor's court at Madras should have civil and criminal jurisdiction over all British subjects residing in the territories of the Company on the coast of Coromandel, or in any other part of the Carnatic, or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Legislation of 1788.

In 1788 a serious difference arose between the Board of Control and the Board of Directors as to the limits of their respective powers. The Board of Control, notwithstanding the objections of the directors, ordered out four royal regiments to India, and charged their expenses to Indian revenues. They maintained that they had this power under the Act

[1] 26 Geo. III, c. 16. Lord Cornwallis, though holding the double office of governor-general and commander-in-chief, still found his powers insufficient, and was obliged to obtain in 1791 a special Act (31 Geo. III, c. 40) confirming his orders and enlarging his powers. The exceptional powers given to the governor-general by the Act of 1786 were reproduced in the Act of 1793 (33 Geo. III, c. 52, ss. 47-51), by sections which are still nominally in force but have been practically superseded by a later enactment of 1870 (33 Vict. c. 3, s. 5). See Digest, s. 44.

[2] 26 Geo. III, c. 25.

[3] 26 Geo. III, c. 57.

of 1784. The directors on the other hand argued that under provisions of the Act of 1781, which were still unrepealed, the Company could not be compelled to bear the expenses of any troops except those sent out on their own requisition. Pitt proposed to settle the difference in favour of the Board of Control by means of an explanatory or declaratory Act. The discussions which took place on this measure raised constitutional questions which have been revived in later times[1].

It was objected that troops raised by the Company in India would suffice and could be much more cheaply maintained. It was also argued on constitutional grounds that no troops ought to belong to the king for which Parliament did not annually vote the money.

In answer to the first objection Pitt confessed that, in his opinion, the army in India ought to be all on one establishment, and should all belong to the king, and declared that it was mainly in preparation for this reform that the troops were to be conveyed[2].

With respect to the second objection he argued that the Bill of Rights and the Mutiny Act, which were the only positive enactments on the subject, were so vague and indefinite as to be almost nugatory, and professed his willingness to receive any suggestions made for checking an abuse of the powers proposed to be conferred by the Bill.

The questions were eventually settled by a compromise. The Board of Control obtained the powers for which they asked, but a limit was imposed on the number of troops which might be charged to Indian revenues. At the same time the Board of Control were prevented from increasing any salary or awarding any gratuity without the concurrence of the directors and of Parliament, and the directors were required

[1] See the discussion in 1878 as to the employment of Indian troops in Malta, Hansard, ccxl. 14, and Anson, Law and Custom of the Constitution, pt. ii. p. 361 (2nd ed.).

[2] Mill, bk. vi. ch. i. Lord Cornwallis was at this time considering a scheme for the combination of the king's and Company's forces. See Cornwallis Correspondence, i. 251, 341; ii. 316, 572.

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to lay annually before Parliament an account of the Company's receipts and disbursements [1].

Charter Act of 1793.

In 1793, towards the close of Lord Cornwallis' governor-generalship, it became necessary to take steps for renewal of the Company's charter. Pitt was then at the height of his power; his most trusted friend, Dundas, was President of the Board of Control [2]; the war with France, which had just been declared, monopolized English attention; and Indian finances were, or might plausibly be represented as being, in a tolerably satisfactory condition. Accordingly the Act of 1793 [3], which was introduced by Dundas, passed without serious opposition, and introduced no important alterations. It was a measure of consolidation, repealing several previous enactments, and runs to an enormous length, but the amendments made by it relate to matters of minor importance.

The two junior members of the Board of Control were no longer required to be Privy Councillors. Provision was made for payment of the members and staff of the Board out of Indian revenues.

The commander-in-chief was not to be a member of the council at Fort William unless specially appointed by the Court of Directors. Departure from India with intent to return to Europe was declared to vacate the office of governor-general, commander-in-chief, and certain other high offices. The procedure in the councils of the three presidencies was regulated, the powers of control exercisable by the governor-general were emphasized and explained, and the power of the governor-general to overrule the majority of his council was repeated and extended to the Governors of Madras and Bombay. The governor-general, whilst visiting another presidency, was to supersede the governor, and might appoint a vice-president to act for him in his absence. A series of elaborate provisions continued the exclusive privileges of trade

[1] Mill, bk. vi. ch. i; 28 Geo. III, c. 8; Clode, Military Forces of Crown, i. 270.

[2] He did not become president till June 22, 1793, but had long been the most powerful member of the Board.

[3] 33 Geo. III, c. 52.

for a further term of twenty years, subject to modifications of detail. Another equally elaborate set of sections regulated the application of the Company's finances. Power was given to raise the dividend to 10 per cent., and provision was made for payment to the Exchequer of an annual sum of £500,000 out of the surplus revenue which might remain after meeting the necessary expenses, paying the interest on, and providing for reduction of capital of, the Company's debt, and payment of dividend. It is needless to say that this surplus was never realized. The mutual claims of the Company and the Crown in respect of military expenses were adjusted by wiping out all debts on either side up to the end of 1792, and providing that thenceforward the Company should defray the actual expenses incurred for the support and maintenance of the king's troops serving in India. Some supplementary provisions regulated matters of civil administration in India. The admiralty jurisdiction of the supreme court at Calcutta was expressly declared to extend to the high seas. Power was given to appoint covenanted servants of the Company or other British inhabitants to be justices of the peace in Bengal. Power was also given to appoint scavengers for the presidency towns, and to levy what would now be called a sanitary rate. And the sale of spirituous liquors was made subject to the grant of a licence.

Legislation between 1793 and 1813.

A few Parliamentary enactments of constitutional importance were passed during the interval between the Charter Acts of 1793 and 1813.

The lending of money by European adventurers to native princes on exorbitant terms had long produced grave scandals, such as those which were associated with the name of Paul Benham, and were exposed by Burke in his speech on the Nabob of Arcot's debts. An Act of 1797[1] laid down an important provision (s. 28) which is still in force, and which prohibits, under heavy penalties, unauthorized loans by British subjects to native princes.

[1] 37 Geo. III, c. 142. See Digest, s. 118.

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The same Act reduced the number of judges of the supreme court at Calcutta to three, a chief justice and two puisnes, and authorized the grant of charters for the constitution of a recorder's court instead of the mayor's court at Madras and Bombay. It reserved native laws and customs in terms similar to those contained in the Act of 1781. It also embodied an important provision giving an additional and express sanction to the exercise of a local power of legislation in the Presidency of Bengal. One of Lord Cornwallis' regulations of 1793 (Reg. 41) had provided for forming into a regular code all regulations that might be enacted for the internal government of the British territories of Bengal. The Act of 1797 (s. 8) recognized and confirmed this 'wise and salutary provision,' and directed that all regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the provincial courts of justice, should be registered in the judicial department, and formed into a regular code and printed, with translations in the country languages, and that all the grounds of each regulation should be prefixed to it. The provincial courts of judicature were directed to be bound by these regulations, and copies of the regulations of each year were to be sent to the Court of Directors and to the Board of Control[1].

An Act of 1799[2] gave the Company further powers for raising European troops and maintaining discipline among them. Under this Act the Crown took the enlistment of men for serving in India into its own hands, and, on petition from the Company, transferred recruits to them at an agreed sum per head for the cost of recruiting. Authority was given to the Company to train and exercise recruits, not exceeding 2,000, and to appoint officers for that purpose (bearing also

[1] See Harington's Analysis, 1-9.

[2] 39 & 40 Geo. III, c. 109. See Clode, Military Forces of Crown, i. 289.

Her Majesty's commission) at pay not exceeding the sums stated in the Act. The number which the Crown could hold for transfer to the Company was limited to 3,000 men, or such a number as the Mutiny Act for the time being should specify. All the men raised were liable to the Mutiny Act until embarked for India.

An Act of 1800[1] provided for the constitution of a supreme court at Madras, and extended the jurisdiction of the supreme court at Calcutta over the district of Benares (which had been ceded in 1775) and all other districts which had been or might thereafter be annexed to the Presidency of Bengal.

An Act of 1807[2] gave the governors and councils at Madras and Bombay the same powers of making regulations, subject to approval and registration by the supreme court and recorder's court, as had been previously vested in the Government of Bengal, and the same power of appointing justices of the peace.

Charter Act of 1813.

The legislation of 1813 was of a very different character from that of 1793. It was preceded by the most searching investigation which had yet taken place into Indian affairs. The vigorous policy of annexation carried on by Lord Wellesley during his seven years' tenure of office (1798–1805) had again involved the Company in financial difficulties, and in 1808 a committee of the House of Commons was appointed to inquire, amongst other things, into the conditions on which relief should be granted. It continued its sittings over the four following years, and the famous Fifth Report, which was published in July, 1812, is still a standard authority on Indian land tenures, and the best authority on the judicial and police arrangements of the time. When the time arrived for taking steps to renew the Company's charter, Dundas, who had become Lord Melville, was still President of the Board of

[1] 39 & 40 Geo. III, c. 79. The charter under this Act was granted in December, 1801. Bombay did not acquire a supreme court until 1823 (3 Geo. IV, c. 71).

[2] 47 Geo. III, sess. 2, c. 68.

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Control. But he no longer found it possible to avoid the questions which had been successfully shirked in 1793. Napoleon had closed the European ports, and British traders imperatively demanded admission to the ports of Asia. At the end of 1811 Lord Melville told the Court of Directors that His Majesty's ministers could not recommend to Parliament the continuance of the existing system unless they were prepared to assent that the ships, as well as goods, of private merchants should be admitted into the trade with India under such restrictions as might be deemed reasonable.

The Company struggled hard for their privileges. They began by arguing that their political authority and commercial privileges were inseparable, that their trade profits were dependent upon their monopoly, and that if their trade profits were taken away their revenues would not enable them to carry on the government of the country. But their accounts had been kept in such a fashion as to leave it very doubtful whether their trade profits, as distinguished from their territorial revenues, amounted to anything at all. And this ground of argument was finally cut from under their feet by the concession of a continued monopoly of the tea trade, from which it was admitted that the commercial profits of the Company were principally, if not wholly, derived.

Driven from this position, the Company dwelt on the political dangers which would arise from an unlimited resort of Europeans to India. The venerable Warren Hastings was called from his retreat to support on this point the views of the Company before the House of Commons, and it was on this occasion that the members testified their respect for him by rising as a body on his entrance into the House and standing until he had assumed his seat within the bar. His evidence confirmed the assertions of the Company as to the danger of unrestricted European immigration into India, and was supplemented by evidence to a similar effect from Lord Teignmouth (Sir J. Shore), Colonel (Sir John) Malcolm, and

Colonel (Sir Thomas) Munro. 'Experience had proved,' they affirmed, 'that it was difficult to impress even upon the servants of the Company, whilst in their noviciate, a due regard for the feelings and habits of the people, and Englishmen of classes less under the observation of the supreme authorities were notorious for the contempt with which, in their natural arrogance and ignorance, they contemplated the usages and institutions of the natives, and for their frequent disregard of the dictates of humanity and justice in their dealings with the people of India. The natives, although timid and feeble in some places, were not without strength and resolution in others, and instances had occurred where their resentment had proved formidable to their oppressors. It was difficult, if not impossible, to afford them protection, for the Englishman was amenable only to the courts of British law established at the presidencies, and although the local magistrate had the power of sending him further for trial, yet to impose upon the native complainant and witness the obligation of repairing many hundred miles to obtain redress was to subject them to delay, fatigue, and expense, which would be more intolerable than the injury they had suffered[1].'

That their apprehensions were unfounded no one who is acquainted with the history or present conditions of British India would venture to deny. But they were expressed by the advocates of the Company in language of unjustifiable intemperance and exaggeration. Thus Mr. Charles Grant, in the course of the debate in the House of Commons, dwelt on the danger of letting loose among the people of India a host of desperate needy adventurers, whose atrocious conduct in America and in Africa afforded sufficient indication of the evil they would inflict upon India.

The controversy was eventually compromised by allowing Europeans to resort to India, but only under a strict system of licences.

[1] Mill's British India, continuation by Wilson, bk. i. ch. viii.

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Closely connected with the question of the admission of independent Europeans into India was that of missionary enterprise. The Government were willing to take steps for the recognition and encouragement of Christianity by the appointment of a bishop and archdeacons. But a large number of excellent men, belonging mainly to the Evangelical party, and led in the House of Commons by Wilberforce, were anxious to go much further in the direction of committing the Indian Government to the active propagation of Christianity among the natives of India. On the other hand, the past and present servants of the Company, including even those who, like Lord Teignmouth, were personally in sympathy with the Evangelical school, were fully sensitive to the danger of interfering with the religious convictions or alarming the religious prejudices of the natives.

The proposals ultimately submitted by the Government to Parliament in 1813 were embodied in thirteen resolutions[1].

The first affirmed the expediency of extending the Company's privileges, subject to modifications, for a further term of twenty years.

The second preserved to the Company the monopoly of the China trade and of the trade in tea.

The third threw open to all British subjects the export and import trade with India, subject to the exception of tea, and to certain safeguards as to warehousing and the like.

The fourth and fifth regulated the application of the Company's territorial revenues and commercial profits.

The sixth provided for the reduction of the Company's debt, for the payment of a dividend at the rate of 10½ per cent. per annum, and for the division of any surplus between the Company and the public in the proportion of one-sixth to the former and five-sixths to the latter.

The seventh required the Company to keep their accounts in such manner as to distinguish clearly those relating to the

[1] Printed in an appendix to vol. vii. of Mill and Wilson's British India.

territorial and political departments from those relating to the commercial branch of their affairs. CH. I.

The eighth affirmed the expediency, in the interests of economy, of limiting the grants of salaries and pensions.

The ninth reserved to the Court of Directors the right of appointment to the offices of governor-general, governor, and commander-in-chief, subject to the approbation of the Crown.

Under the tenth, the number of the king's troops in India was to be limited, and any number exceeding the limit was, unless employed at the express requisition of the Company, to be at the public charge. This modified, in a sense favourable to the Company, Pitt's declaratory Act of 1788.

Then followed a resolution that it was expedient that the church establishment in the British territories in the East Indies should be placed under the superintendence of a bishop and three archdeacons, and that adequate provision should be made from the territorial revenues of India for their maintenance.

The twelfth resolution declared that the regulations to be framed by the Court of Directors for the colleges at Haileybury and Addiscombe ought to be subject to the regulation of the Board of Control, and that the Board ought to have power to send instructions to India about the colleges at Calcutta[1] and Madras.

It was round the thirteenth resolution that the main controversy raged, and its vague and guarded language shows the difficulty that was experienced in settling its terms. The resolution declared 'that it is the duty of this country to promote the interest and happiness of the native inhabitants of the British dominions in India, and that such measures ought to be adopted as may tend to the introduction amongst them of useful knowledge, and of religious and moral improvement. That in the furtherance of the above objects,

[1] The college at Calcutta had been founded by Lord Wellesley for the training of the Company's civil servants.

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sufficient facilities shall be afforded by law to persons desirous of going to and remaining in India for the purpose of accomplishing these benevolent designs, provided always, that the authority of the local Governments, respecting the intercourse of Europeans with the interior of the country, be preserved, and that the principles of the British Government, on which the natives of India have hitherto relied for the free exercise of their religion, be inviolably maintained.' One discerns the planter following in the wake of the missionary, each watched with a jealous eye by the Company's servants.

The principles embodied in the Resolutions of 1813 were developed in the Act of the same year[1]. The language of the preamble to the Act is significant. It recites the expediency of continuing to the Company for a further term the possession of the territorial acquisitions in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same[2].' The constitutional controversy of the preceding century was not to be reopened.

The Act then grants the Indian possessions and revenues to the Company for a further term of twenty years, reserves to them for the same time the China trade and the tea trade, but throws open the general India trade, subject to various restrictive conditions.

The thirty-third section recites the thirteenth resolution, and the expediency of making provision for granting permission to persons desirous of going to and remaining in India, for the purposes mentioned in the resolution (missionaries) 'and for other lawful purposes' (traders), and then enables the Court of Directors or, on their refusal, the Board of Control, to grant licences and certificates entitling the applicants to proceed to any of the principal settlements of the Company, and to remain in India as long as they conduct themselves

[1] 55 Geo. III, c. 155.

[2] The sovereignty of the Crown had been clearly reserved in the charter of 1698. But at that time the territorial possessions were insignificant.

properly, but subject to such restrictions as may for the time being be judged necessary. Unlicensed persons are to be liable to the penalties imposed by earlier Acts on interlopers, and to punishment on summary conviction in India. British subjects allowed to reside more than ten miles from a presidency town are to procure and register certificates from a district court.

A group of sections relates to the provision for religion, learning, and education, and the training of the Company's civil and military servants. There is to be a Bishop of Calcutta, with three archdeacons under him. The colleges at Calcutta and elsewhere are placed under the regulations of the Board of Control. One lac of rupees in each year is to be 'set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India.' The college at Haileybury and the military seminary at Addiscombe[1] are to be maintained, and no person is to be appointed writer unless he has resided four terms at Haileybury, and produces a certificate that he has conformed to the regulations of the college.

Then come provisions for the application of the revenues[2], for keeping the commercial and territorial accounts distinct, and for increasing and further defining the powers of superintendence and direction exercised by the Board of Control.

The patronage of the Company is preserved, subject to the approval of the Crown in the case of the higher offices, and of the Board of Control in certain other cases.

[1] The names of these places are not mentioned.

[2] An interesting discussion of these provisions is to be found in the correspondence of 1833 between Mr. Charles Grant and the Court of Directors. According to Mr. Grant the principle established by the Acts of 1793 and 1813 was that the profit accruing from the Company's commerce should, in the first instance, be employed in securing the regular payment of dividends to the proprietors of stock, and should then be applied for the benefit of the territory. The last-mentioned applications to be suspended only so long as the burden of debt on the territory continued below a certain specified amount.

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The number of king's troops to be paid for out of the Company's revenues is not to exceed 20,000, except in case of special requisition. In order to remove doubts it is expressly declared that the Government in India may make laws, regulations, and articles of war for their native troops, and provide for the holding of courts-martial.

The local Governments are also empowered to impose taxes on persons subject to the jurisdiction of the supreme court, and to punish for non-payment.

Justices of the peace are to have jurisdiction in cases of assault or trespass committed by British subjects on natives of India, and also in cases of small debts due to natives from British subjects. Special provision is made for the exercise of jurisdiction in criminal cases over British subjects residing more than ten miles from a presidency town; and British subjects residing or trading, or occupying immovable property, more than ten miles from a presidency town are to be subject to the jurisdiction of the local civil courts.

And, finally, special penalties are enacted for theft, forgery, perjury, and coinage offences, the existing provisions of the common or statute law being apparently considered insufficient for dealing adequately with these offences.

Legislation between 1813 and 1833.

The imperial legislation for India during the interval between 1813 and 1833 does not present many features of importance.

An Act of 1814[1] removed doubts as to the powers of the Indian Governments to levy duties of customs and other taxes.

An Act of 1815[2] gave power to extend the limits of the presidency towns, and amended some of the minor provisions of the Act of 1813.

An Act of 1818[3] removed doubts as to the validity of certain Indian marriages, a subject which has always presented much difficulty, but which has now been dealt with by Indian legislation[4].

[1] 54 Geo. III, c. 105.
[2] 55 Geo. III, c. 84.
[3] 58 Geo. III, c. 84.
[4] See Acts III & XV of 1872.

An Act of 1820[1] enabled the East India Company to raise and maintain a corps of volunteer infantry.

An Act of 1823[2] charged the revenues of India with the payment of additional sums for the pay and pensions of troops serving in India, and regulated the pensions of Indian bishops and archdeacons, and the salaries and pensions of the judges of the supreme courts.

The same Act authorized the grant of a charter for a supreme court of Bombay in substitution for the recorder's court.

The prohibition on settling in India without a licence was still retained. But restrictions on Indian trade were gradually removed, and a consolidating Act of 1823[3] expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's charter except China.

Another Act of 1823[4] consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the Company's service.

An Act of 1824[5] transferred the island of Singapore to the East India Company.

Acts of 1825[6] and 1826[7] further regulated the salaries of Indian judges and bishops, and regulated the appointment of juries in the presidency towns.

An Act of 1828[8] declared the real estates of British subjects dying within the jurisdiction of the supreme courts at the presidency towns to be liable for payment of their debts. Other Acts of the same year applied the East India Mutiny Act to the force known as the Bombay Marine[9], and extended to the East Indies sundry amendments of the English criminal law[10].

And an Act of 1832[11] authorized the appointment of

[1] 1 Geo. IV, c. 99. [2] 4 Geo. IV, c. 71.
[3] 4 Geo. IV, c. 80. [4] 4 Geo. IV, c. 81.
[5] 5 Geo. IV, c. 108. Singapore was placed under the Colonial Office by the Straits Settlements Act, 1866 (29 & 30 Vict. c. 115, s. 1).
[6] 6 Geo. IV, c. 85. [7] 7 Geo. IV, c. 37. [8] 9 Geo. IV, c. 33.
[9] 9 Geo. IV, c. 72. [10] 9 Geo. IV, c. 74. [11] 2 & 3 Will. IV, c. 117.

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persons other than covenanted civilians to be justices of the peace in India, and repealed the provisions requiring jurors to be Christians.

Charter Act of 1833.

When the time came round again for renewing the Company's charter, Lord William Bentinck's peaceful *régime* had lasted for five years in India; the Reform Act had just been carried in England, and Whig principles were in the ascendant. Bentham's views on legislation and codification were exercising much influence on the minds of law reformers. Macaulay was in Parliament, and was secretary to the Board of Control, and James Mill, Bentham's disciple, was the examiner of India correspondence at the India House. The Charter Act of 1833[1], like that of 1813, was preceded by careful inquiries into the administration of India. It introduced important changes into the constitution of the East India Company and the system of Indian administration.

The territorial possessions of the Company were allowed to remain under their government for another term of twenty years; but were to be held by the Company 'in trust for His Majesty, his heirs and successors, for the service of the Government of India.'

The Company's monopoly of the China trade, and of the tea trade, was finally taken away.

The Company were required to close their commercial business and to wind up their affairs with all convenient speed. Their territorial and other debts were charged on the revenues of India, and they were to receive out of those revenues an annual dividend at the rate of £10 10*s.* per cent. on the whole amount of their capital stock (i. e. £630,000 a year), but this dividend was to be subject to redemption by Parliament on payment of £200 sterling for every £100 stock, and for the purpose of this redemption a sum of two million

[1] 3 & 4 Will. IV, c. 85. The Act received the Royal Assent on August 28, 1833, but did not come into operation, except as to appointments and the like, until April 22, 1834 (s. 117).

pounds was to be paid by the Company to the National Debt Commissioners and accumulated with compound interest until it reached the sum of twelve millions[1].

The Company, while deprived of their commercial functions, retained their administrative and political powers, under the system of double government instituted by previous Acts, and, in particular, continued to exercise their rights of patronage over Indian appointments. The constitution of the Board of Control was modified, but as the powers of the Board were executed by its president the modifications had no practical effect. The Act re-enacted provisions of former Acts as to the 'secret committee' of the Court of Directors, and the dispatches to be sent through that committee, and it simplified the formal title of the Company by authorizing it to be called the East India Company.

No very material alteration was made in the system on which the executive government was to be carried on in India.

The superintendence, direction, and control of the whole civil and military government were expressly vested in a governor-general and councillors, who were to be styled 'the Governor-General of India in Council[2].' This council was increased by the addition of a fourth ordinary member, who was not to be one of the Company's servants, and was not to be entitled to act as member of council except for legislative purposes[3]. It need hardly be stated that the fourth member was Macaulay.

[1] As to the financial arrangements made under these provisions, see the evidence of Mr. Melvill before the Lords Committee of 1852.

[2] It will be remembered that the Governor-General had been previously the Governor-General of Bengal in Council.

[3] 'The duty of the fourth ordinary member' (under the Act of 1833) 'was confined entirely to the subject of legislation; he had no power to sit or vote except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right, that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of Government upon any subject not immediately connected with legislation.' Minute by Sir Barnes Peacock of November 3, 1859, below, p. 542.

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The overgrown Presidency of Bengal[1] was to be divided into two distinct presidencies, to be called the Presidency of Fort William and the Presidency of Agra. But this provision never came into operation. It was suspended by an enactment of 1835 (5 & 6 Will. IV, c. 52), and the suspension was continued indefinitely by the Charter Act of 1853 (16 & 17 Vict. c. 95, s. 15).

The intention was that each of the four presidencies, Fort William, Fort St. George, Bombay, and Agra, should have, for executive purposes, a governor and council of its own. But the governor-general and his council were to be, for the present, the governor and council of Fort William, and power was given to reduce the members of the council, or even to suspend them altogether and vest the executive control in a governor alone[2].

Important alterations were made by the Act of 1833 in the legislative powers of the Indian Government. 'At that date there were five different bodies of statute law in force in the (Indian) empire. First, there was the whole body of statute law existing so far as it was applicable, which was introduced by the charter of George I and which applied, at least, in the presidency towns. Secondly, all English Acts subsequent to that date, which were expressly extended to any part of India. Thirdly, the regulations of the governor-general's council, which commence with the Revised Code of 1793, containing forty-eight regulations, all passed on the same day (which embraced the results of twelve years' antecedent legislation), and were continued down to the year 1834. They only had force in the

[1] It had been increased by the addition of Benares in 1775, of the modern Orissa in 1803, of large territories in the North-West in 1801–1803, and of Assam, Arakan, and Tenasserim in 1824.

[2] The power of reduction was exercised in 1833 by reducing the number of ordinary members of the Madras and Bombay councils from three to two (Political Dispatch of December 27, 1833). The original intention was to abolish the councils of the minor presidencies, but, at the instance of the Court of Directors, their retention was left optional.

territories of Bengal. Fourthly, the regulations of the Madras council, which spread over the period of thirty-two years, from 1802 to 1834, and are [were] in force in the Presidency of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mountstuart Elphinstone in 1827, comprising the results of twenty-eight years' previous legislation, and were also continued into 1834, having force and validity in the Presidency of Fort St. David[1].

'In 1833,' says Mr. Cowell in continuation, 'the attention of Parliament was directed to three leading vices in the process of Indian government. The first was in the nature of the laws and regulations; the second was in the ill-defined authority and power from which these various laws and regulations emanated; and the third was the anomalous and sometimes conflicting judicatures by which the laws were administered.'

The Act of 1833 vested the legislative power of the Indian Government exclusively in the Governor-General in Council, who had been, as has been seen, reinforced by the addition of a fourth legislative member. The four Presidential Governments were merely authorized to submit to the Governor-General in Council 'drafts or projects of any laws or regulations which they might think expedient,' and the Governor-General in Council was required to take these drafts and projects into consideration and to communicate his resolutions thereon to the Government proposing them.

The Governor-General in Council was expressly empowered to make laws and regulations—

(*a*) for repealing, amending, or altering any laws or regulations whatever, for the time being in force in the Indian territories;

(*b*) for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by charter or otherwise, and the jurisdiction thereof;

[1] Cowell, Tagore Lectures of 1872. For 'Fort St. David' read 'Bombay.' See also Harington's Analysis of the Bengal Regulations, and below, p. 395.

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(*c*) for all places and things whatsoever within and throughout the whole and every part of the said territories;

(*d*) for all servants of the Company within the dominions of princes and States in alliance with the Company; and

(*e*) as articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers.

But this power was not to extend to the making of any laws and regulations—

(i) which should repeal, vary, or suspend any of the provisions of the Act of 1833, or of the Acts for punishing mutiny and desertion of officers and soldiers in the service of the Crown or of the Company; or

(ii) which should affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the Company, or any part of the unwritten laws or constitutions of the United Kingdom, whereon may depend the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over the Indian territories; or

(iii) without the previous sanction of the Court of Directors, which should empower any court other than a chartered court to sentence to death any of His Majesty's natural-born subjects born in Europe, or their children, or abolish any of the chartered courts[1].

There was also an express saving of the right of Parliament to legislate for India and to repeal Indian Acts, and, the better to enable Parliament to exercise this power, all Indian laws were to be laid before Parliament.

[1] See Digest, s. 63.

Laws made under the powers given by the Act were to be subject to disallowance by the Court of Directors, acting under the Board of Control, but, when made, were to have effect as Acts of Parliament, and were not to require registration or publication in any court of justice.

The laws made under the Act of 1833 were known as Acts, and took the place of the 'regulations' made under previous Acts of Parliament.

A comprehensive consolidation and codification of Indian laws was contemplated. Section 53 of the Act recited that it was 'expedient that, subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well Europeans as natives, may be subject, should be established in the said territories at an early period; and that such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings, and peculiar usages of the people, should be enacted; and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended.'

The Act then went on to direct the Governor-General in Council to issue a commission, to be known as the 'Indian Law Commission,' which was to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the Indian territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the Indian territories, to which any inhabitants of those territories were then subject. The commissioners were to report to the Governor-General in Council, setting forth the results of their inquiries, and suggesting alterations, and these reports were to be laid before Parliament.

This was the first Indian Law Commission, of which

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Macaulay was the most prominent member[1]. Its labours resulted directly in the preparation of the Indian Penal Code, which however did not become law until 1860, and, indirectly and after a long interval of time, in the preparation of the Codes of Civil and Criminal Procedure and other codes of substantive and adjective law which now form part of the Indian Statute Book.

Important provisions were made by the Act of 1833 for enlarging the rights of European settlers, and for protecting the natives of the country, and ameliorating their condition.

It was declared to be lawful for any natural-born subject of His Majesty to proceed by sea to any port or place having a custom-house establishment within the Indian territories, and to reside thereat, or to proceed to and reside in or pass through any part of the territories which were under the Company's government on January 1, 1800, or any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, or of the settlements of Singapore and Malacca. These rights might be exercised without the requirement of any licence. But every subject of His Majesty not being a native was, on his arrival in India from abroad, to signify on entry, to an officer of customs, his name, place of destination, and objects of pursuit in India. A licence was still required for residence in any part of India other than those above mentioned, but power was reserved to the Governor-General in Council, with the previous approbation of the Court of Directors, to declare any such part open, and remove the obligation of a licence.

Another section expressly enabled any natural-born subject of the Crown to acquire and hold lands in India.

The regulations as to licences have long since been abolished

[1] His colleagues were another English barrister, Mr. Cameron, afterwards law member of council, and two civil servants of the Company, Mr. Macleod of the Madras Service, and Mr. (afterwards Sir William) Anderson of the Bombay Service. Sir William Macnaghten of the Bengal Service was also appointed, but did not accept the appointment.

or fallen into desuetude. But by s. 84 of the Act of 1833 the Governor-General in Council was required, as soon as conveniently might be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in British India of persons not authorized to enter or reside therein. Effect has been given to this requirement by Act III of 1864, under which the Government of India and local Governments can order foreigners to remove themselves from British India, and apprehend and detain them if they refuse to obey the order. Under the same Act the Governor-General in Council can apply to British India, or any part thereof, special provisions as to the reporting and licensing of foreigners[1].

An echo of the fears expressed in 1813 as to the dangers likely to arise from the free settlement of interlopers is to be found in a section which, after reciting that 'the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide for any mischief or dangers that may arise therefrom,' requires the Governor-General in Council, by laws and regulations, to provide, with all convenient speed, for the protection of the natives of the said territories from insult and outrage in their persons, religions, and opinions[2].

Section 87 of the Act declared that 'no native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company.' The policy of freely admitting natives of India to a share in the administration of the country has never been more broadly or emphatically enunciated.

[1] See *Alter Caufman* v. *Government of Bombay*, [1894] I. L. R. 18 Bombay, 636. As to the general powers of excluding aliens from British territory, see *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 272 (exclusion of Chinese from Australia), and an article in the Law Quarterly Review for 1897 on 'Alien Legislation and the Prerogative of the Crown.'

[2] See ss. 295–298 of the Indian Penal Code.

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And finally, the Governor-General in Council was required forthwith to take into consideration the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout the Indian territories so soon as such extinction should be practicable and safe, and to prepare and submit to the Court of Directors drafts of laws on the subject [1]. In preparing these drafts due regard was to be had to the laws of marriage and the rights and authorities of fathers and heads of families.

The sections of the Act which follow these broad declarations of policy are concerned mainly with regulations relating to the ecclesiastical establishments in India and increasing the number of bishopries to three, and with regulations for the college of Haileybury.

The Act of 1833, as sent out to India, was accompanied by an explanatory dispatch from the Court of Directors, which, according to a tradition in the India Office, was drafted by James Mill [2].

Legislation between 1833 and 1853.

During the twenty years' interval between the Charter Act of 1833 and that of 1853 there was very little Parliamentary legislation on India.

An Act of 1835 (5 & 6 Will. IV, c. 52) suspended the provisions of the Act of 1833 as to the division of the Presidency of Bengal into two presidencies [3], and authorized the appointment of a lieutenant-governor for the North-Western Provinces [4]. The project of establishing an executive council for the Bengal and North-Western Provinces was abandoned.

An Act of 1840 (3 & 4 Vict. c. 37) consolidated and

[1] See Act V of 1843 and ss. 370, 371 of the Indian Penal Code. See also Mr. Cameron's evidence before the select committee of the House of Lords in 1852, and Minutes by Sir H. S. Maine, No. 92.

[2] Kaye, Administration of the East India Company, p. 137. The dispatch is printed below, p. 492.

[3] By s. 15 of the Charter Act of 1853 (16 & 17 Vict. c. 95) this suspension was continued until the Court of Directors and Board of Control should otherwise direct.

[4] The first appointment was made in 1836.

amended the Indian Mutiny Acts, and empowered the Governor-General in Council to make regulations for the Indian Navy.

An Act of 1848 (11 & 12 Vict. c. 21) enacted for India a law of insolvency, which is still in force in the presidency towns.

Charter Act of 1853.

In 1853, during the governor-generalship of Lord Dalhousie, it became necessary to take steps for renewing the term of twenty years which had been created by the Act of 1833, and accordingly the last of the Charter Acts (16 & 17 Vict. c. 95) was passed in that year.

It differed from the previous Charter Acts by not fixing any definite term for the continuance of the powers, but simply providing that the Indian territories should remain under the government of the Company, in trust for the Crown, until Parliament should otherwise direct.

The Act reduced the number of the directors of the Company from twenty-four to eighteen, and provided that six of these should be appointed by the Crown.

It continued indefinitely, until the Court of Directors and Board of Control should otherwise direct, the suspension of the division of the Bengal Presidency contemplated by the Act of 1835, but authorized the appointment of a separate governor for that presidency, distinct from the governor-general[1]. However, the Act went on to provide that, unless and until this separate governor was appointed, the Court of Directors and Board of Control might authorize the appointment of a lieutenant-governor of Bengal. The power of appointing a separate governor was never brought into operation, but the power of appointing a lieutenant-governor was exercised in 1854, and has been continued ever since.

By the following section, power was given to the directors

[1] Under the Act of 1833 the Governor-General of India was also Governor of Bengal, but during his frequent absences from Calcutta used to delegate his functions in the latter capacity to the senior member of his council. See the evidence of Sir Herbert Maddock and Mr. F. Millett before the select committee of the House of Lords in 1852.

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either to constitute one new presidency, with the same system of a governor and council as in the Presidencies of Madras and Bombay, or, as an alternative, to authorize the appointment of a lieutenant-governor. In this case also the former power was never exercised, but a new lieutenant-governorship was created for the Punjab in 1859.

Further alterations were made by the Act of 1853 in the machinery for Indian legislation. The 'fourth' or legislative member of the governor-general's council was placed on the same footing with the older or 'ordinary' members of the council by being given a right to sit and vote at executive meetings. At the same time the council was enlarged for legislative purposes by the addition of legislative members, of whom two were the Chief Justice of Bengal and one other supreme court judge, and the others were Company's servants of ten years' standing appointed by the several local Governments. The result was that the council as constituted for legislative purposes under the Act of 1853 consisted of twelve[1] members, namely—

The governor-general.

The commander-in-chief.

The four ordinary members of the governor-general's council.

The Chief Justice of Bengal.

A puisne judge.

Four representative members (paid)[2] from Bengal, Madras, Bombay, and the North-Western Provinces.

The sittings of the legislative council were made public and their proceedings were officially published.

The Indian Law Commission appointed under the Act of 1833 had ceased to exist before 1853. It seems to have lost much of its vitality after Macaulay's departure from

[1] Power was given by the Act of 1853 to the governor-general to appoint, with the sanction of the Home Government, two other members from the civil service, but this power was never exercised.

[2] They received salaries of £5,000 a year each.

India. It lingered on for many years, published periodically ponderous volumes of reports, on which, in many instances, Indian Acts have been based, but did not succeed in effecting any codification of the laws or customs of the country, and was finally allowed to expire [1]. Efforts were, however, made by the Act of 1853 to utilize its labours, and for this purpose power was given to appoint a body of English commissioners, with instructions to examine and consider the recommendations of the Indian Commission [2].

And, finally, the right of patronage to Indian appointments was by the Act of 1853 taken away from the Court of Directors and directed to be exercised in accordance with regulations framed by the Board of Control. These regulations threw the covenanted civil service open to general competition [3].

In 1855 an Act was passed (18 & 19 Vict. c. 53) which prohibited the admission of further students to Haileybury College after January 25, 1856, and directed the college to be closed on January 31, 1858.

Establishment of chief commissionerships.

In 1854 was passed an Act [4] which has had important administrative results in India. Under the old system the only mode of providing for the government of newly acquired territory was by annexing it to one of the three presidencies,

[1] As to the proceedings of the commission, see the evidence given in 1852 before the select committee of the House of Lords on the East India Company's charter by Mr. F. Millett and Mr. Hay Cameron. Mr. Millett was the first secretary, and was afterwards member of the commission. Mr. Cameron was one of the first members of the commission, and was afterwards legislative member of the governor-general's council.

[2] The commissioners appointed under this power were Sir John (afterwards Lord) Romilly, Sir John Jervis (Chief Justice of Common Pleas), Sir Edward Ryan, C. H. Cameron, J. N. Macleod, J. A. F. Hawkins, Thomas Flower Ellis, and Robert Lowe (Lord Sherbrooke). They were instructed by the Board of Control to consider specially the preparation of a simple and uniform code of procedure for Indian courts, and the amalgamation of the supreme and sadr courts. (Letter of November 30, 1853, from the Board of Control to the Indian Law Commission.)

[3] They were prepared in 1854 by a committee under the presidency of Lord Macaulay.

[4] 17 & 18 Vict. c. 77.

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This provision was made by the Act of 1854, which empowered the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in the possession or under the government of the East India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration [2]. The mode in which this power has been practically exercised has been by the appointment of chief commissioners, to whom the Governor-General in Council delegates such powers as need not be reserved to the Central Government. In this way chief commissionerships have been established for Assam, the Central Provinces, Burma [3], and other parts of India. But the title of chief commissioner was not directly recognized by Act of Parliament [4], and the territories under the administration of chief commissioners are technically 'under the immediate authority and management' of the Governor-General in Council within the meaning of the Act of 1854.

The same Act empowered the Government of India, with the sanction of the Home authorities, to define the limits

[1] See preamble to Act of 1854. [2] See Digest, s. 56.
[3] Burma has since been constituted a lieutenant-governorship.
[4] It has since been recognized by the Act of 1870 (33 Viet. c. 3), ss. 1, 3.

of the several provinces in India; expressly vested in the Governor-General in Council all the residuary authority not transferred to the local Governments of the provinces into which the old Presidency of Bengal had been divided; and directed that the governor-general was no longer to bear the title of governor of that presidency.

The Government of India Act, 1858.

The Mutiny of 1857 gave the death-blow to the system of 'double government,' with its division of powers and responsibilities. In February, 1858, Lord Palmerston introduced a Bill for transferring the government of India to the Crown. Under his scheme the home administration was to be conducted by a president with the assistance of a council of eight persons. The members of the council were to be nominated by the Crown, were to be qualified either by having been directors of the Company or by service or residence in India, and were to hold office for eight years, two retiring by rotation in each year. In other respects the scheme did not differ materially from that eventually adopted. The cause of the East India Company was pleaded by John Stuart Mill in a weighty State paper, but the second reading of the Bill was carried by a large majority.

Shortly afterwards, however, Lord Palmerston was turned out of office on the Conspiracy to Murder Bill, and was succeeded by Lord Derby, with Mr. Disraeli as Chancellor of the Exchequer and Lord Ellenborough as President of the Board of Control. The Chancellor of the Exchequer promptly introduced a new Bill for the government of India, of which the most remarkable feature was a council consisting partly of nominees of the Crown and partly of persons elected on a complicated and elaborate system, by citizens of Manchester and other large towns, holders of East India stock, and others. This scheme died of ridicule, and when the House assembled after the Easter recess no one could be found to defend it[1].

[1] It was to this Bill that Lord Palmerston applied the Spanish boy's remark about Don Quixote, and said that whenever a man was to be seen laughing in the streets he was sure to have been discussing the Government of India Bill.

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Mr. Disraeli grasped eagerly at a suggestion by Lord John Russell that the Bill should be laid aside, to be succeeded by another based on resolutions of the House. In the meantime Lord Ellenborough had been compelled to resign in consequence of disapproval of his dispatch censuring Lord Canning's Oudh proclamation, and had been succeeded by Lord Stanley, on whom devolved the charge of introducing and piloting through the House the measure which eventually became law as the Act for the better government of India[1].

This Act declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State, to whom were to be transferred the powers formerly exercised either by the Court of Directors or by the Board of Control. Power was given to appoint a fifth principal Secretary of State for this purpose.

The Secretary of State was to be aided by a council of fifteen members, of whom eight were to be appointed by the Crown and seven elected by the directors of the East India Company. The major part both of the appointed and of the elected members were to be persons who had served or resided in India for ten years, and, with certain exceptions, who had not left India more than ten years before their appointment. Future appointments or elections were to be so made that nine at least of the members of the council should hold these qualifications. The power of filling vacancies was vested in the Crown as to Crown appointments, and in the council itself as to others. The members of the council were to hold office during good behaviour, but to be removable on an address by both Houses of Parliament, and were not to be capable of sitting or voting in Parliament[2].

The council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India

[1] 21 & 22 Vict. c. 108.

[2] These provisions have been modified by subsequent legislation. See Digest, s. 4.

and the correspondence with India. The Secretary of State was to be the president of the council, with power to overrule in case of difference of opinion, and to send, without reference to the council, any dispatches which might under the former practice have been sent through the secret committee[1].

The officers on the home establishment both of the Company and of the Board of Control were to form the establishment of the new Secretary of State in Council, and a scheme for a permanent establishment was to be submitted.

The patronage of the more important appointments in India was vested either in the Crown or in the Secretary of State in Council. Lieutenant-governors were to be appointed by the governor-general subject to the approval of the Crown.

As under the Act of 1853, admission to the covenanted civil service was to be open to all natural-born subjects of Her Majesty, and was to be granted in accordance with the results of an examination held under rules to be made by the Secretary of State in Council with the assistance of the Civil Service Commissioners.

The patronage to military cadetships was to be divided between the Secretary of State and his council.

The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be under the control of the Secretary of State in Council, but was to be charged with a dividend on the Company's stock and with their debts, and the Indian revenues remitted to Great Britain were to be paid to the Secretary of State in Council and applied for Indian purposes. Provision was made for the appointment of a special auditor of the accounts of the Secretary of State in Council[2].

The Board of Control was formally abolished. With respect to contracts and legal proceedings, the Secretary of State in Council was given a quasi-corporate character for the purpose

[1] Digest, ss. 6–14. [2] Ibid. 22, 30.

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The Indian Army.

It has been seen that under the authority given by various Acts the Company raised and maintained separate military forces of their own. The troops belonging to these forces, whilst in India, were governed by a separate Mutiny Act, perpetual in duration, though re-enacted from time to time with amendments[2]. The Company also had a small naval force, once known as the Bombay Marine, but after 1829 as the Indian Navy.

The Act of 1858 transferred to the service of the Crown all the naval and military forces of the Company, retaining, however, their separate local character, with the same liability to local service and the same pay and privileges as if they were in the service of the Company. Many of the European troops refused to acknowledge the authority of Parliament to make this transfer. They demanded re-engagement and bounty as a condition of the transfer of their services[3], and, failing to get these terms, were offered their discharge.

In 1860 the existence of European troops as a separate force was put an end to by an Act (23 & 24 Vict. c. 100) which, after reciting that it is not expedient that a separate European force should be continued for the local service of Her Majesty in India, formally repealed the enactments by which the Secretary of State in Council was authorized to give directions for raising such forces.

In 1861 the officers and soldiers formerly belonging to the Company's European forces were invited to join, and many of them were transferred to, the regular army under the

[1] Digest, s. 35.

[2] The first of these Acts was an Act of 1753 (27 Geo. II, c. 9), and the last was an Act of 1857 (20 & 21 Vict. c. 66), which was repealed in 1863 (26 & 27 Vict. c. 48).

[3] In 1859 they made a 'demonstration' which, from the small stature of the recruits enlisted during the Indian Mutiny, was sometimes called the 'Dumpy Mutiny.' Pritchard, Administration of India, i. 36.

authority of an Act of that year (24 & 25 Vict. c. 74). Thus the European army of the late East India Company, except a small residue, became merged in the military forces of the Crown [1].

The naval force of the East India Company was not amalgamated with the Royal Navy, but came to an end in 1863, when it was decided that the defence of India against serious attack by sea should be undertaken by the Royal Navy, which was also to provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy [2].

The change effected by the Government of India Act, 1858, was formally announced in India by the Queen's Proclamation of November 1, 1858 [3].

In 1859 the Government of India Act, 1859 (22 & 23 Vict. c. 41), was passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India [4].

Legislation of 1861.

Three Acts of great importance were passed in the year 1861.

Indian Civil Service Act, 1861.

Under the Charter Act of 1793 rank and promotion in the Company's civil service were strictly regulated by seniority, and all offices in the 'civil line' of the Company's service in India under the degree of councillor were strictly reserved to the civil servants of the presidency in which the office was held. But by reason of the exigencies of the public service, numerous civil appointments had been

[1] Under existing arrangements all the troops sent to India are placed on the Indian establishment, and from that time cease to be voted on the Army Estimates. Clode, Military Forces of the Crown, ii. 269. The number of the forces in the regular army as fixed by the annual Army Act is declared to be 'exclusive of the number actually serving within Her Majesty's Indian possessions.' As to the constitutionality of employing Indian troops outside India, see the debates of 1878 on the employment of Indian troops in Malta, Hansard, ccxl. 187, 194, 213, 369, 515; and Anson, Law and Custom of the Constitution, pt. ii. p. 363 (2nd ed.).

[2] See Sir Charles Wood's letter to the Admiralty of Oct. 20, 1862.

[3] Printed below, p. 571.

[4] See Digest, s. 33.

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CH. I. made in India in disregard of these restrictions. The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), validated all these irregular appointments in the past, but scheduled a number of appointments which, in the future, were to be reserved to members of the covenanted civil service [1].

At the same time it abolished the rule as to seniority and removed all statutory restrictions on appointments to offices not in the schedule. And, even with respect to the reserved offices, it left a power of appointing outsiders under exceptional circumstances. This power can only be exercised where it appears to the authority making the appointment that, under the circumstances of the case, it ought to be made without regard to statutory conditions. The person appointed must have resided for at least seven years in India. If the post is in the Revenue or Judicial Departments, the person appointed must pass the same examinations and tests as are required in the case of the covenanted civil service. The appointment is provisional only, and must be forthwith reported to the Secretary of State in Council with the special reasons for making it, and unless approved within twelve months by the Secretary of State it becomes void [2].

Indian Councils Act, 1861.

The Indian Councils Act, 1861 (24 & 25 Vict. c. 67), modified the constitution of the governor-general's executive council and remodelled the Indian legislatures.

A fifth ordinary member was added to the governor-general's council. Of the five ordinary members, three were required to have served for ten years in India under the Company or the Crown, and one was to be a barrister or advocate of five years' standing. Power was retained to appoint the commander-in-chief an extraordinary member [3].

Power was given to the governor-general, in case of his absence from headquarters, to appoint a president of the council, with all the powers of the governor-general except

[1] This schedule is still in force. Digest, s. 93.

[2] This provision still exists. Ibid. s. 95.

[3] Ibid. 39, 40.

those with respect to legislation. And, in such case, the governor-general might invest himself with all the powers exercisable by the Governor-General in Council, except the powers with respect to legislation [1].

For purposes of legislation the governor-general's council was reinforced by additional members, not less than six nor more than twelve in number, nominated by the governor-general and holding office for two years. Of these additional members, not less than one-half were to be non-official, that is to say, persons not in the civil or military service of the Crown [2]. The lieutenant-governor of a province was also to be an additional member whenever the council held a legislative sitting within his province.

The Legislative Council established under the Act of 1853 had modelled its procedure on that of Parliament, and had shown what was considered an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government [3]. The functions of the new Legislative Council were limited strictly to legislation, and it was expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill, or having reference to a Bill actually introduced [4].

Measures relating to the public revenue or debt, religion, military or naval matters, or foreign relations, were not to be introduced without the governor-general's sanction. The assent of the governor-general was required to every Act passed

[1] See Digest, ss. 45, 47.

[2] These provisions have recently been modified by the Act of 1892 (55 & 56 Vict. c. 14, s. 1). See Digest, s. 60.

[3] It had, among other things, discussed the propriety of the grant to the Mysore princes. See Proceedings of Legislative Council for 1860, pp. 1343–1402.

[4] 24 & 25 Vict. c. 67, s. 19. As to the object with which this section was framed, see paragraph 24 of Sir Charles Wood's dispatch of August 9, 1861, printed below, p. 558. The restrictions imposed in 1861 were relaxed in 1892 (55 & 56 Vict. c. 14, s. 2). Digest, s. 64.

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The legislative power of the Governor-General in Council was declared to extend to making laws and regulations for repealing, amending, or altering any laws or regulations for the time being in force in the 'Indian territories now under the dominion of Her Majesty[1],' and to making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty[2]. But there were express savings for certain Parliamentary enactments, for the general authority of Parliament, and for any part of the unwritten laws or constitution of the United Kingdom whereon the allegiance of the subject or the sovereignty of the Crown may depend.

An exceptional power was given to the governor-general, in cases of emergency, to make, without his council, ordinances, which were not to remain in force for more than six months[3].

Doubts had for some time existed as to the proper mode of legislating for newly acquired territories of the Company. When Benares and the territories afterwards known as the North-Western Provinces were annexed, the course adopted was to extend to them, with some variations, the laws and regulations in force in the older provinces of Bengal, Behar, and Orissa. But when the Saugor and Nerbudda territories were acquired from the Marathas by Lord Hastings, and when Assam, Arakan, and Tenasserim were conquered in 1824, and Pegu in 1852, these regions were specially exempted from the Bengal Regulations, instructions, however, being given to the officers administering them to conduct their procedure in accordance with the spirit of the regulations, so

[1] Explained by 55 & 56 Vict. c. 14, s. 3. Digest, s. 63.

[2] These powers were extended by 28 & 29 Vict. c. 17, s. 1, and 32 & 33 Vict. c. 98, s. 1. See Digest, s. 63.

[3] See ibid. 69.

far as they were suitable to the circumstances of the country[1]. And when the Punjab was annexed the view taken was that the Governor-General in Council had power to make laws for ıe new territory, not in accordance with the forms prescribed y the Charter Acts for legislation, but by executive orders, ɔrresponding to the Orders in Council made by the Crown ɔr what are called Crown Colonies. Provinces in which this ower was exercised were called 'non-regulation provinces' to istinguish them from the 'regulation provinces,' which were overned by regulations formally made under the Charter .cts. A large body of laws had been passed under this power or assumed power, and in order to remove any doubts as to their validity a section was introduced into the Indian Councils Act, 1861, declaring that no rule, law, or regulation made before the passing of the Act by the governor-general or certain other authorities should be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts[2].

The power of legislation which had been taken away from the Governments of Madras and Bombay by the Charter Act of 1833 was restored to them by the Act of 1861. The councils of the governors of Madras and Bombay were expanded for legislative purposes by the addition of the advocate-general and of other members nominated on the same principles as the additional members of the governor-general's council[3]. No line of demarcation was drawn between the subjects reserved for the central and the local legislatures respectively; but the previous sanction of the governor-general was made requisite for legislation by the local legislature in certain

[1] Chesney's Indian Polity (3rd ed.), pp. 58, 64.

[2] Indian legislation subsequently became necessary for the purpose of ascertaining and determining the rules which had been thus validated in general terms. See Sir James Stephen's speech in the Legislative Council in the debate on the Punjab Laws Acts, March 26, 1872, and the chapter contributed by him to Sir W. Hunter's Life of Lord Mayo, vol. ii. pp. 214–221.

[3] These provisions have also been modified by the Act of 1892. See Digest, ss. 71, 76, 77.

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cases, and all Acts of the local legislature required the subsequent assent of the governor-general in addition to that of the Secretary of State, and were made subject to disallowance by the Crown, as in the case of the governor-general's council. There were also the same restrictions on the proceedings of the local legislatures [1].

The governor-general was directed to establish, by proclamation, a legislative council for Bengal [2], and was empowered to establish similar councils for the North-Western Provinces and for the Punjab [3]. These councils were to consist of the lieutenant-governor and of a certain number of nominated councillors, and were to be subject to the same provisions as the local legislatures for Madras and Bombay.

The Act also gave power to constitute new provinces for legislative purposes and appoint new lieutenant-governors, and to alter the boundaries of existing provinces [4].

Indian High Courts Act, 1861.

The amalgamation of the supreme and sadr courts, that is to say, of the courts representing the Crown and the Company respectively at the presidency towns, had long been in contemplation, and was carried into effect by the Indian High Courts Act, 1861 [5].

By this Act the Queen was empowered to establish, by letters patent [6], high courts of judicature in Calcutta, Madras, and Bombay, and on their establishment the old chartered supreme courts and the old 'Sadr Adalat' Courts were to be abolished, the jurisdiction and the powers of the abolished courts being transferred to the new high courts.

Each of the high courts was to consist of a chief justice and not more than fifteen judges, of whom not less than one-third, including the chief justice, were to be barristers, and

[1] See note 3, p. 105.

[2] A legislative council for Bengal was established by a proclamation of January 18, 1862.

[3] A legislative council was established for the North-Western Provinces and Oudh in 1886, and for the Punjab in 1897.

[4] ss. 46, 47. Digest, s. 74.

[5] 24 & 25 Vict. c. 104.

[6] The letters patent or charters now in force with respect to these three high courts bear date December 28, 1865. They are printed below in Chapter v.

not less than one-third were to be members of the covenanted civil service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The high courts were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction [1].

Power was given by the Act to establish another high court, with the same constitution and powers as the high courts established at the presidency towns [2].

Legislation since 1861.

The Indian High Courts Act of 1861 closed the series of constitutional statutes consequent on the transfer of the government of India to the Crown. Such Acts of Parliament as have since then been passed for India have done little more than amend, with reference to minor points, the Acts of 1858 and 1861.

The Indian High Courts Act, 1865 [3], empowered the Governor-General in Council to pass orders altering the limits of the jurisdiction of the several chartered high courts and enabling them to exercise their jurisdiction over native Christian subjects of Her Majesty resident in Native States.

Another Act of the same year, the Government of India Act, 1865 [4], extended the legislative powers of the governor-general's council to all British subjects in Native States, whether servants of the Crown or not [5], and enabled the Governor-General in Council to define and alter, by proclamation, the territorial limits of the various presidencies and lieutenant-governorships [6].

The Government of India Act, 1869 [7], vested in the Secretary of State the right of filling all vacancies in the Council of India, and changed the tenure of members of the council from a tenure during good behaviour to a term of ten years. It also transferred to the Crown from the Secretary of State

[1] See Digest, ss. 96–103.

[2] s. 16. Under this power a high court was established at Allahabad in 1866. It is probable that the power was thereby exhausted.

[3] 28 & 29 Vict. c. 15. Digest, s. 104.

[4] 28 & 29 Vict. c. 17.

[5] See Digest, s. 63.

[6] Ibid. 57.

[7] 32 & 33 Vict. c. 97.

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in Council the right of filling vacancies in the offices of the members of the councils in India.

The Indian Councils Act, 1869[1], still further extended the legislative powers of the governor-general's council by enabling it to make laws for all native Indian subjects of Her Majesty in any part of the world, whether in India or not.

A very important modification in the machinery for Indian legislature was made by the Government of India Act, 1870[2]. It has been seen that for a long time the governor-general believed himself to have the power of legislating by executive order for the non-regulation provinces. The Indian Councils Act of 1861, whilst validating rules made under this power in the past, took away the power for the future. The Act of 1870 practically restored this power by enabling the governor-general to legislate in a summary manner for the less advanced parts of India[3]. The machinery provided is as follows. The Secretary of State in Council, by resolution, declares the provisions of section 1 of the Act of 1870 applicable to some particular part of a British Indian province. Thereupon the Governor in Council, lieutenant-governor, or chief commissioner of the province, may at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part, and these drafts, when approved and assented to by the Governor-General in Council, and duly gazetted, have the same force of law as if they had been formally passed at sittings of the Legislative Council. This machinery has been extensively applied to the less advanced districts of the different Indian provinces, and numerous regulations have been, and are constantly being, made under it. For instance, it was used in legislating for the newly acquired territory of Upper Burma.

The same Act of 1870 contained two other provisions of

[1] 32 & 33 Vict. c. 98. See Digest, s. 63.

[2] 33 & 34 Vict. c. 3. Digest, s. 68.

[3] This restoration of a power of summary legislation was strongly advocated by Sir H. S. Maine. See Minutes by Sir H. S. Maine, pp. 153, 156.

considerable importance. One of them (s. 5) repeated and strengthened the power of the governor-general to overrule his council[1]. The other (s. 6), after reciting the expediency of giving additional facilities for the employment of natives of India 'of proved merit and ability' in the civil service of Her Majesty in India, enabled any native of India to be appointed to any 'office, place, or employment' in that service, notwithstanding that he had not been admitted to that service in the manner directed by the Act of 1858, i. e. by competition in England. The conditions of such appointments were to be regulated by rules made by the Governor-General in Council, with the approval of the Secretary of State in Council[2]. The result of these rules was the 'statutory civilian,' who is now being merged in or superseded by the new 'Provincial Service.'

Two small Acts were passed in 1871, the Indian Councils Act, 1871 (34 & 35 Vict. c. 34)[3], which made slight extensions of the powers of local legislatures, and the Indian Bishops Act, 1871 (34 & 35 Vict. c. 62), which regulated the leave of absence of Indian bishops.

An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company as from January 1, 1874.

The Indian Councils Act, 1874 (37 & 38 Vict. c. 91), enabled a sixth member of the governor-general's council to be appointed for public works purposes.

The Council of India Act, 1876 (39 & 40 Vict. c. 7), enabled the Secretary of State, for special reasons, to appoint any person having professional or other peculiar qualifications to be a member of the Council of India, with the old tenure, 'during good behaviour,' which had been abolished in 1869[4].

[1] See Digest, s. 44. It will be remembered that Lord Lytton acted under this power when he exempted imported cotton goods from duty in 1879.

[2] See ibid. 94.

[3] This Act was passed in consequence of the decision of the Bombay High Court in *R. v. Reay*, 7 Bom. Cr. 6. See note on s. 79 of Digest.

[4] This power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to him.

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In the same year was passed the Royal Titles Act, 1876 (39 & 40 Vict. c. 10), which authorized the Queen to assume the title of Empress of India.

The Indian Salaries and Allowances Act, 1880 (43 & 44 Vict. c. 3), enabled the Secretary of State to regulate by order certain salaries and allowances which had been previously fixed by statute [1].

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), enabled the Governor-General in Council to legislate for maintaining discipline in a small marine establishment, called Her Majesty's Indian Marine Service, the members of which were neither under the Naval Discipline Act nor under the Merchant Shipping Acts [2].

The Council of India Reduction Act, 1889 (52 & 53 Vict. c. 65), authorized the Secretary of State to abstain from filling vacancies in the Council of India until the number should be reduced to ten.

The important Indian Councils Act, 1892 (55 & 56 Vict. c. 14), authorized an increase in the number of the members of the Indian legislative councils, and empowered the Governor-General in Council, with the approval of the Secretary of State in Council, to make rules regulating the conditions under which these members are to be nominated [3]. At the same time the Act relaxed the restrictions imposed by the Act of 1861 on the proceedings of the legislative councils by enabling rules to be made authorizing the discussion of the annual financial statement, and the asking of questions, under such conditions and restrictions as may be prescribed [4].

The Act also cleared up a doubt as to the meaning of an enactment in the Indian Councils Act of 1861, modified some

[1] See Digest, ss. 80, 113.

[2] See ibid. 63.

[3] See ibid. 60, 71, 73. This Act has been described as introducing for the first time the principle of popular representation into the Indian legislative councils. East India (Progress and Condition) Report for 1892–93, p. 4. But the language of the statute itself hardly justifies this description.

[4] See Chapter iv, below.

of the provisions of that Act about the office of 'additional members' of legislative councils, and enabled local legislatures, with the previous sanction of the governor-general, to repeal or alter Acts of the governor-general's council affecting their province [1].

And, finally, the Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), abolished the offices of commanders-in-chief of the Madras and Bombay armies, and thus made possible a simplification of the Indian military system which had been asked for persistently by four successive viceroys [2].

[1] See Digest, s. 76. In the absence of this power the sphere of action of the new legislature for the North-Western Provinces and Oudh was confined within an infinitesimal area.

[2] Administrative reforms in India are not carried out with undue precipitancy. The appointment of a *single* commander-in-chief for India, with four subordinate commanders under him, was recommended by Lord William Bentinck, Sir Charles Metcalfe, and others in 1833. (Further Papers respecting the East India Company's Charter, 1833.)

CHAPTER II

SUMMARY OF EXISTING LAW

THE administration of British India rests upon English Acts of Parliament, largely supplemented by Indian Acts and regulations [1].

Home Government. Secretary of State.

At the head of the administration in England is the Secretary of State, who exercises, on behalf of the Crown, the powers formerly exercised by the Board of Control and Court of Directors, and who, as a member of the Cabinet, is responsible to, and represents the supreme authority of, Parliament [2].

Council of India.

He is assisted by a council, the Council of India, originally fifteen in number, but, under an Act of 1889, capable of being reduced to ten. The members of the council are appointed by the Secretary of State, and hold office for a term of ten years, with a power of reappointment under special circumstances for a further term of five years. There is also a special power to appoint any person 'having professional or other peculiar qualifications' to be a member of the council during good behaviour. At least nine members of the council must be persons who have served or resided in British India for not less than ten years, and who have left British India not more than ten years before their

[1] The best authorities for the existing system of administration are Sir John Strachey's India (edition of 1894), Sir W. Hunter's Indian Empire, Chesney's Indian Polity (3rd ed., 1894), and the latest of the Decennial Reports on the Moral and Material Progress of India (1894).

[2] Digest, s. 2.

appointment. A member of the council cannot sit in Parliament[1].

The duties of the Council of India are to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of State is president of the council, and has power to appoint a vice-president[2].

Every order proposed to be made by the Secretary of State must, before it is issued, be either submitted to a meeting of the council or deposited in the council room for seven days before a meeting of the council. But this requirement does not apply to orders which, under the old system, might have been sent through the secret committee[3].

In certain matters, including the expenditure of the revenues of India, orders of the Secretary of State are required by law to obtain the concurrence of a majority of votes at a meeting of his council. But in all other matters the Secretary of State can overrule his council, subject to a right on the part of any dissentient member to have his opinion, and the reasons for it, recorded[4].

The council is thus a consultative body, without any power of initiation, and with a very limited power of veto. Even on questions of expenditure, where they arise out of previous decisions of the Cabinet, as would usually be the case in matters relating to peace or war, or foreign relations, the Secretary of State has the practical power, though perhaps not the technical right, to overrule his council.

For the better transaction of business the council is divided into committees[5].

Staff of India Office.

The establishment of the Secretary of State, that is to say the permanent staff constituting what is popularly known as the India Office, was fixed by an Order of the Queen in Council made under the Act of 1858[6]. It is divided into

[1] Digest, ss. 2, 3. [2] Ibid. 5–10. [3] Ibid. 12–14.
[4] Ibid. 10. [5] Ibid. 11. [6] Ibid. 18.

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departments, each under a separate permanent secretary, and the committees of the council are so formed as to correspond to these departments.

Indian revenues.

All the revenues of India are required by law to be received for and in the name of the Queen, and to be applied and disposed of exclusively for the purposes of the Government of India [1]. The expenditure of these revenues, both in India and elsewhere, is declared to be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of the revenues is to be made without the concurrence of a majority of the votes at a meeting of the Council of India [2]. Except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, to be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by Her Majesty's forces charged upon those revenues [3].

Audit.

The accounts of the Indian revenues and expenditure are laid annually before Parliament, and the accounts of the Secretary of State in Council are audited by an auditor, who is appointed by the Queen by warrant countersigned by the Chancellor of the Exchequer [4].

Contracts and legal proceedings.

For the purpose of legal proceedings and contracts, but not for the purpose of holding property, the Secretary of State in Council is a juristic person or body corporate by that name, having the same capacities and liabilities as the East India Company [5]. He has also statutory powers of contracting through certain officers in India [6].

Government in India. The governor-general.

At the head of the Government in India is the governor-general, who is also viceroy, or representative of the Queen. He is appointed by the Queen by warrant under her

[1] Digest, s. 22.

[2] Ibid. 23. See, however, the practical qualifications of this requirement noted above.

[3] Ibid. 24. [4] Ibid. 29, 30. [5] Ibid. 32, 35. [6] Ibid. 33.

sign manual, and usually holds office for a term of five years [1].

The governor-general's council.

He has a council, which at present consists of five members, besides the commander-in-chief, who may be, and in practice always is, appointed an extraordinary member [2].

The Governor of Madras or Bombay is also an extraordinary member of the council whenever it sits within his province (which, in fact, never happens [3]).

Power was given by an Act of 1874 to appoint a sixth ordinary member for public works purposes, but this power is at present in abeyance.

The ordinary members of the governor-general's council are appointed by the Crown, in practice for a term of five years. Three of them must be persons who, at the time of their appointment, have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing [4].

If there is a difference of opinion in the council, under ordinary circumstances the opinion of the majority prevails, but, under exceptional circumstances, the governor-general has power to overrule his council [5].

If the governor-general visits any part of India unaccompanied by his council, he is empowered to appoint some ordinary member of his council to be president of the council in his place, and, in such case, there is further power to make an order authorizing the governor-general alone to exercise all the executive powers of the Governor-General in Council [6].

The official acts of the central Government in India are expressed to run in the name of the Governor-General in Council, often described as the Government of India [7]. The

[1] Digest, ss. 36, 37. [2] Ibid. 38–40. [3] Ibid. 40.
[4] Ibid. 39. [5] Ibid. 44. [6] Ibid. 45. 47.
[7] Legislative sanction for this name is given by the Indian General Clauses Act (X of 1897, s. 3 (22)).

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executive work of the Government of India is distributed among departments which may be compared to the departments of the central Government in England. There are at present seven of these departments—Home, Foreign, Finance, Military, Public Works, Revenue and Agriculture, and Legislative. At the head of each of these departments is one of the secretaries to the Government of India, who corresponds to the permanent secretary in England, and each of them, except the Foreign Department, is assigned to the special care of one of the members of council. The Foreign Department is under the immediate superintendence of the viceroy, who may be thus called his own Foreign Minister, although members of council share responsibility for such matters relating to the department as come within their cognizance. The member of council who is in charge of the Home Department also takes charge, under existing arrangements, of the department of Revenue and Agriculture.

Minor questions are settled departmentally. Questions involving a difference of opinion between two departments, or raising any grave issue, are brought up to be settled in council.

The council usually meets once a week, but special meetings may be summoned at any time. The meetings are private, and the procedure is of the same informal kind as at a meeting of the English Cabinet, the chief difference being that one of the secretaries to the Government usually attends during the discussion of any question affecting his department, and takes a note of the order passed [1].

Every dispatch from the Secretary of State is circulated among all the members of the council, and every dispatch to the Secretary of State is signed by every member of the council who is present at headquarters, as well as by the viceroy, unless he is absent.

[1] For a description of the mode of transacting business in council before the work of the Government was 'departmentalized,' see Lord Minto in India, p. 26.

If any member of the council dissents from any dispatch signed by his colleagues, he has the right to append to it a minute of dissent.

The headquarters of the Government of India are at Calcutta during the cold weather season, and at Simla during the rest of the year [1].

The local Governments.

For purposes of administration British India is divided into eight great provinces, with the addition of a few minor charges.

The eight great provinces are the old presidencies [2] of Madras (Fort St. George) and Bombay; the four lieutenant-governorships of Bengal, the North-Western Provinces (with which the chief commissionership of Oudh is now combined), the Punjab, and Burma; and the two chief commissionerships of Assam and the Central Provinces [3].

The provinces of Madras and Bombay are each under a governor and council appointed by the Crown, in practice for a term of five years, the governor being usually an English statesman, and the council consisting of two members of the Indian Civil Service of twelve years' standing [4]. The governors of Madras and Bombay retain their privilege of communicating directly with the Secretary of State, and have the same power as the governor-general of overruling their councils in cases of emergency. For reasons which are mainly historical, the control of the Government of India over the Governments of Madras and Bombay is less complete than over other local Governments.

The lieutenant-governors have no executive councils, and are appointed by the governor-general, with the approval

[1] As to the advantages and disadvantages of Simla as a seat of Government, see Minutes by Sir H. S. Maine, No. 70.

[2] As to the ambiguity of the term 'presidency,' see Chesney, Indian Polity (3rd ed.), pp. 79, 88.

[3] The chief commissionership of the Central Provinces was constituted in 1861, that of British (now Lower) Burma in 1862, that of Assam in 1874. Burma was constituted a lieutenant-governorship in 1897.

[4] Digest, ss. 50, 51.

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of the Queen [1]. They are in practice appointed from the Indian Civil Service [2], and hold office for five years.

The chief commissioners of Assam and the Central Provinces are appointed by the Governor-General in Council, and rank next in importance to lieutenant-governors.

The minor charges are Coorg, Ajmere-Merwara, British Baluchistan [3], and the penal settlement of the Andaman Islands. These are also under chief commissioners, who, however, have less independent power of government than the chief commissioners of the larger provinces, and whose offices are usually combined with some other post. Thus the Resident at Mysore is, *ex-officio*, Chief Commissioner of Coorg, and the Governor-General's Agent for Rajputana is, *ex-officio*, Chief Commissioner of Ajmere-Merwara.

Berar is not part of British India. It is administered on behalf of the Nizam, to whom all surplus revenues are paid over. The administration is supervised by a commissioner under the Resident at Hyderabad.

Indian legislation.

For legislative purposes the governor-general's council is expanded into a legislative council by the addition of not less than ten nor more than sixteen additional members, of whom at least one-half must be persons not in the civil or military service of the Crown in India. These additional members are nominated by the governor-general in accordance with regulations made by the Governor-General in Council with the approval of the Secretary of State in Council [4]. Under the rules framed in pursuance of the Act of 1892 [5] there are sixteen additional members, of whom six are officials appointed by the Governor-General in Council, and ten are non-official. Four of the latter are appointed by the governor-general on the recommendation of a majority of the non-official additional members of the provincial

[1] Digest, s. 55.

[2] There may have been exceptions, e. g. Sir H. Durand.

[3] Constituted a chief commissionership in 1887.

[4] Digest, s. 60.

[5] Below, p. 337.

legislatures of Madras, Bombay, Bengal, and the North-Western Provinces and Oudh, each of these bodies recommending one member; and a fifth member on the recommendation of the Calcutta Chamber of Commerce. The governor-general can, if he thinks fit, decline to accept a recommendation thus made, and in that case a fresh recommendation is submitted to him. The remaining five members are nominated by the governor-general, 'in such manner as shall appear to him most suitable with reference to the legislative business to be brought before the council, and the due representation of the different classes of the community.'

The additional members hold office for two years, and are entitled to be present at all legislative meetings of the council, but at no others [1].

The legislature thus formed bears the awkward name of 'the Governor-General in Council at meetings for the purpose of making laws and regulations.'

The Governor-General in Council at these meetings has power to make laws—

(*a*) for all persons, for all courts, and for all places and things within British India; and

(*b*) for all British subjects of Her Majesty and servants of the Government of India within other parts of India, that is to say, within the Native States; and

(*c*) for all persons being native Indian subjects of Her Majesty, or native Indian officers or soldiers in Her Majesty's Indian forces when in any part of the world, whether within or without Her Majesty's dominions; and

(*d*) for all persons employed or serving in the Indian Marine Service [2].

But this power is subject to various restrictions. For

[1] Digest, s. 60.

[2] Ibid. 63. As to whether there is any power to legislate for servants of the Government outside 'India,' see the note (*c*) on that section.

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instance, it does not extend to the alteration of any Act of Parliament passed since 1860, or of certain specified portions of earlier Acts[1], and does not enable the legislature to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend the allegiance of any person to the Crown or the sovereignty or dominion of the Crown in any part of British India[2].

Measures affecting the public debt or revenues of India, the religion or religious rites or usages of any class of Her Majesty's subjects in India, the discipline or maintenance of the military or naval forces, or the relations of the Government with foreign States, cannot be introduced by any member without the previous sanction of the governor-general[3]. Every Act requires the governor-general's assent, unless it is reserved by him for the signification of Her Majesty's pleasure, in which case the power of assenting rests with the Crown. The assent of the Crown is in other cases not necessary to the validity of an Act, but any Act may be disallowed by the Crown[4].

Under the Act of 1861, the powers of the Legislative Council were strictly confined to the consideration of measures introduced into the council for the purpose of enactment or the alteration of rules for the conduct of business[5]. But under the Act of 1892 rules may be made authorizing at these meetings discussion of the annual financial statement and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as may be prescribed[6]. Under the rules made in pursuance of this power the annual financial statement must be made publicly in the council. Every member is at liberty to make any observations he thinks fit, and the financial member of council and the

[1] Namely, 3 & 4 Will. IV, c. 85, except ss. 81–86; 16 & 17 Vict. c. 95; 17 & 18 Vict. c. 77; 21 & 22 Vict. c. 106; 22 & 23 Vict. c. 41. See 24 & 25 Vict. c. 67, s. 22, as amended by 32 & 33 Vict. c. 98, s. 2.

[2] Digest, s. 63. [3] Ibid. 64. [4] Ibid. 65, 66.

[5] See above, p. 103. [6] See below, p. 348.

president have the right of reply. Under the same rules due notice must be given of any question, and every question must be a request for information only, and must not be put in argumentative, or hypothetical, or defamatory language. No discussion is permitted in respect of an answer given on behalf of the Government, and the president may disallow any question which, in his opinion, cannot be answered consistently with the public interest.

Besides the formal power of making laws through the Legislative Council, the governor-general has also, under an Act of 1870 [1], power to legislate in a more summary manner, by means of regulations, for the government of certain districts of India of a more backward character, which are defined by orders of the Secretary of State, and which are 'scheduled districts' within the meaning of certain Acts of the Indian Legislature. Under a section of the Act of 1861 [2] the governor-general has also power, in cases of emergency, to make temporary ordinances which are to be in force for a term not exceeding six months.

The Governor-General in Council also exercises certain legislative powers with respect to Native States, but in his executive capacity, and not through his legislative council [3].

Local legislatures.

Local legislatures were established by the Indian Councils Act, 1861, for the provinces of Madras and Bombay, and have, under the powers given by that Act, since been established for Bengal, for the North-Western Provinces and Oudh as constituting a single province, for the Punjab, and for Burma [4].

The legislatures for Madras and Bombay consist of the governor and his council, reinforced, for the purpose of legislation, by additional members. These additional members must be not less than eight and not more than twenty in number, and must include the advocate-general of the province, and at least one-half of them must be persons not

[1] 33 Vict. c. 3, s. 1, above, p. 108. Digest, s. 68.
[2] 24 & 25 Vict. c. 67, s. 23. Digest, s. 69.
[3] See Chapter vii.
[4] See Digest, ss. 70, 74.

CH. II. in the civil or military service of the Crown. They are nominated by the governor in accordance with rules framed by the Governor-General in Council and approved by the Secretary of State in Council. Under the rules recently framed in pursuance of the Act of 1892, their number, both at Madras and at Bombay, is fixed at twenty, of whom not more than nine may be officials. The system of nomination prescribed by the rules is intended to give a representative character to the members nominated under them. For instance, at Bombay eight of the non-official members are nominated on the recommendation of various bodies and associations. The Corporation of Bombay and the Senate of the Bombay University each recommend one member; six are recommended by groups of municipal corporations, groups of district local boards, classes of large landholders, and certain associations of merchants, manufacturers, or tradesmen. The remaining non-official members are nominated by the governor 'in such manner as shall in his opinion secure a fair representation of the different classes of the community.'

In Bengal, the North-Western Provinces, the Punjab, and Burma, where there is no executive council, the legislative councils consist of the lieutenant-governor and of persons nominated by him in accordance with certain statutory requirements and with rules framed by the Governor-General in Council and approved by the Secretary of State in Council. These rules have been framed on the same general principles as those for the nomination of additional members of council in Madras and Bombay [1].

The number of nominated members must be not more than twenty for Bengal and not more than fifteen for the North-Western Provinces and Oudh, and one-third of them must be persons not in the civil or military service of the Crown in India. They hold office for two years [2].

The powers of the local legislatures are more limited than

[1] The rules for the new councils for the Punjab and Burma have not yet (1897) been issued.

[2] Digest, s. 73, and Chapter iv.

those of the legislative council of the governor-general. They cannot make any law affecting any Act of Parliament for the time being in force in the province, and may not, without the previous sanction of the governor-general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India; or

(*b*) regulating any of the current coin, or the issuing of any bills, notes, or other paper currency; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province; or

(*d*) altering the Indian Penal Code; or

(*e*) affecting the religion or religious rites or usages of any class of Her Majesty's subjects in India; or

(*f*) affecting the discipline or maintenance of any part of Her Majesty's naval or military forces; or

(*g*) regulating patents or copyright; or

(*h*) affecting the relations of the Government with foreign princes or States[1].

Until 1892 their powers were much restricted by their inability to alter any Act of the Governor-General in Council, but under a provision of the Indian Councils Act, 1892, the local legislature of any province may, with the previous sanction of the governor-general, repeal or amend as to that province any law or regulation made by any other authority in India[1].

Acts passed by a local legislature in India require the assent of the governor-general, and are subject to disallowance by the Crown in the same manner as Acts of the governor-general's legislative council[2]. The restrictions

[1] Digest, s. 76. [2] Ibid. 78.

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on the subjects of discussion at that council also apply to meetings of the local legislatures [1].

No precise line of demarcation is drawn between the subjects which are reserved to the control of the local legislatures respectively [2]. In practice, however, the governor-general's council confines itself to legislation which is either for provinces having no local legislatures of their own, or on matters which are beyond the competency of the local legislatures, or on branches of the law which require to be dealt with on uniform principles throughout British India. Under this last head fall the so-called Indian codes, including the Penal Code, the Codes of Civil and Criminal Procedure, the Succession Act, the Evidence Act, the Contract Act, the Specific Relief Act, the Negotiable Instruments Act, the Transfer of Property Act, the Trusts Act, and the Easements Act.

Indian Law.

The law administered by the courts of British India consists, so far as it is enacted law, of—

(1) Such Acts of Parliament as extend, expressly or by implication, to British India [3].

(2) The regulations made by the Governments of Madras, Bengal, and Bombay before the coming into operation of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) [4].

[1] Digest, s. 77.

[2] As to the relations between the governor-general's council and local legislatures, see Minutes by Sir H. S. Maine, No. 69.

[3] An edition of these Acts, under the title of A Collection of Statutes relating to India, was published by the Legislative Department in 1881.

[4] The Bengal Regulations passed before 1793 were in that year collected and passed by Lord Cornwallis in the shape of a revised code. 675 Regulations were passed between 1793 and 1834, both inclusive, but of these only eighty-nine are now wholly or partly in force. Such of them as are still in force are to be found in the volumes of the Bengal Code published by the Indian Legislative Department.

Of the 251 Madras Regulations, thirty-three are still wholly or partly in force, and are to be found in the Madras Code.

The Bombay Regulations were revised and consolidated by Mountstuart Elphinstone in 1827. Twenty Bombay Regulations are still wholly or partly in force, and are to be found in the Bombay Code.

(3) The Acts passed by the Governor-General in Council under the Government of India Act, 1833, and subsequent statutes [1].

(4) The Acts passed by the local legislatures of Madras, Bombay, Bengal, the North-Western Provinces and Oudh, the Punjab, and Burma, since their constitution under the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) [2].

(5) The Regulations made by the governor-general under the Government of India Act, 1870 (33 Vict. c. 3) [3].

(6) The Ordinances, if any, made by the governor-general under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and for the time being in force [4].

To these may be added—

(7) Orders in Council made by the Queen in Council and applying to India [5].

(8) Statutory rules made under the authority of English Acts [6].

(9) Rules, orders, regulations, by-laws, and notifications made under the authority of Indian Acts [7].

[1] Revised editions of these Acts, omitting repealed matter, have been published by the Indian Legislative Department. Such of them as relate only to particular provinces are to be found in the 'Codes' for those provinces published by the Legislative Department.

[2] These Acts are to be found in the volumes of 'Codes' mentioned above.

[3] A new edition of the Index to these five classes of enactments has just been published (1897).

[4] See Digest, s. 69.

[5] See e. g. the Order in Council confirming the Extradition (India) Act, 1895 (IX of 1895), published in the Gazette of India, 1896, pt. i. p. 87, and the Zanzibar Order in Council of 1897, which gives an appeal from the British Court in Zanzibar to the Bombay High Court, London Gazette, July 9, 1897.

[6] e. g. the rules made under s. 8 of the Indian Councils Act, 1891 (Digest, s. 23), and under ss. 1 & 2 of the Indian Councils Act, 1892 (Digest, ss. 60, 64).

[7] Lists of such of these as have been made under general Acts have been published by the Legislative Department. There are also some lists and collections of rules made under local Acts. A general collection and index, corresponding to those recently made of statutory rules in England, would be useful.

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(10) Rules, laws, and regulations made by the governor-general or the Governor-General in Council for non-regulation provinces before 1861, and confirmed by s. 25 of the Indian Councils Act, 1861 [1].

These enactments are supplemented by such portions of the Hindu, Mahomedan, and other native laws and customs as are still in force, and by such rules or principles of European, mainly English, law as have been applied to the country, either under the direction to act in accordance with justice, equity, and good conscience, or in other ways, and as have not been superseded by Indian codification.

Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation, but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among Hindus, Mahomedans, and other natives of the country [2].

The Civil Service of India.

The East India Company Act, 1793 (33 Geo. III, c. 52), reserved to members of the covenanted civil service [3] the principal civil offices in India under the rank of member of council. Appointments to this service were made in England by the Court of Directors.

The Government of India Act, 1853 (16 & 17 Vict. c. 95), threw these appointments open to competition among natural-born subjects of Her Majesty, and this system was maintained by the Act of 1858, which transferred the government of

[1] See above, p. 105. Probably most, if not all, of this body of laws has expired or been superseded.

[2] See below, Chapter vi.

[3] So called from the covenants into which the superior servants of the East India Company were required to enter, and by which they were bound not to trade, not to receive presents, to subscribe for pensions, and so forth. Members of the civil service of India are still required to enter into similar covenants before receiving their appointments. See the form, below, p. 593.

India to the Crown[1]. The first regulations for the competitive examinations were framed by Lord Macaulay's committee in 1854, and have since been modified from time to time. Under the existing rules the limits of age for candidates are from twenty-one to twenty-three. Successful candidates remain on probation for one year, and then have to pass an examination in subjects specially connected with their future duties. If they pass, they receive their appointments from the Secretary of State. Probationers are encouraged by a special allowance of £100 to pass their probationary year at a University or College approved by the Secretary of State.

The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), whilst validating certain irregular appointments which had been made in the past, expressly reserved in the future to members of the covenanted service all the more important civil posts under the rank of member of council in the regulation provinces. The schedule of reserved posts, which is still in force[2], does not apply to non-regulation provinces, such as the Punjab, Oudh, the Central Provinces, and Burma, where the higher civil posts may be, and in practice often are, filled by military officers belonging to the staff corps, and others.

An Act of 1870 (33 Vict. c. 3), after reciting that 'it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the civil service of Her Majesty in India,' authorized the appointment of any native of India to any office, place, or employment in the civil service in India, without reference to any statutory restriction, but subject to rules to be made by the Governor-General in Council with the sanction of the Secretary of State in Council[3].

Little was done under this Act until rules for regulating appointments under it were made during Lord Lytton's government in 1879. The intention was that about a sixth of the posts reserved by law to the covenanted civil service

[1] See Digest, s. 92. [2] Ibid. 93. [3] Ibid. 94.

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should be filled by natives of India appointed under these rules; and for the purpose of giving gradual effect to this scheme, the number of appointments made in England was in 1880 reduced by one-sixth. The persons appointed under the rules were often described as 'statutory civilians,' and about sixty natives of India had been so appointed when the system was changed in 1889. The rules did not work satisfactorily, and in 1886 a commission, under the presidency of Sir Charles Aitchison, was appointed by the Government of India with instructions 'to devise a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service.'

Under the scheme now established in pursuance of the recommendations of Sir Charles Aitchison's commission, the Indian civil service has been divided into two branches: first, an imperial service, called the civil service of India, recruited by open competition in England; and, secondly, a provincial service, recruited in each of the chief provinces, under conditions suitable to local circumstances, and consisting almost entirely of natives of the province. These two branches take the place, substantially, of what used to be known as the covenanted and the uncovenanted service[1].

The Indian high courts.

It is only with reference to the four chartered high courts that the judicial system of India is regulated by English statute. Under the Regulating Act of 1773 (13 Geo. III, c. 63), a supreme court was established by charter for Calcutta, and similar courts were established for Madras in 1800 (39 & 40 Geo. III, c. 79), and for Bombay in 1823 (4 Geo. IV, c. 71). The Act of 1781 (21 Geo. III, c. 70) recognized an

[1] The number of the superior staff is very small. In 1887, in the whole of British India, excluding Burma, the number of charges ordinarily held by members of the covenanted service was 765. In 1892 this branch of the service comprised 939 members, but these included officers on leave and not actually employed. Roughly speaking, less than 1,000 Englishmen, including military officers and others, are employed in the civil government of 221 millions of people, and in the partial control of 67 millions more. Strachey, India, p. 63.

appellate jurisdiction over the country courts established by the Company in the Presidency of Bengal[1].

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), amalgamated the supreme and sadr courts at the three presidency towns (that is to say, the courts exercising the jurisdiction of the Crown and the appellate and supervisional jurisdiction of the Company at those towns), by authorizing the establishment of chartered high courts inheriting the jurisdiction of both these courts. The charters now regulating these high courts were granted in December, 1865. The same Act authorized the establishment of a new high court, and accordingly a charter establishing the High Court at Allahabad was granted in 1866.

Each of the four chartered high courts consists of a chief justice, and of as many judges, not exceeding fifteen, as Her Majesty may think fit to appoint[2].

A high court judge must be either—

(*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than fifteen years' standing; or

(*b*) a member of the civil service of India of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or

(*c*) a person having held judicial office not inferior to that of a subordinate judge, or judge of a small cause court, for not less than five years; or

(*d*) a person having been a pleader of a high court for not less than ten years[2].

But not less than one-third of the high court judges, including the chief justice, must be barristers or advocates, and not less than one-third must be members of the civil service of India[2].

Every high court judge holds office during Her Majesty's

[1] See above, p. 60.

[2] Digest, s. 96.

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pleasure [1], and his salary, furlough, and pension are regulated by order of the Secretary of State in Council [2]. Temporary vacancies may be filled by the Governor-General in Council in the case of the high court at Calcutta, and by the local Government in other cases [3].

The jurisdiction of the high courts is regulated by their charters [4], and includes the comprehensive jurisdiction formerly exercised by the supreme and sadr courts [5]. They are also expressly invested by statute (24 & 25 Vict. c. 104, s. 15) with administrative superintendence over the courts subject to their appellate jurisdiction, and are empowered to—

(*a*) call for returns;
(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
(*c*) make general rules for regulating the practice and proceedings of those courts;
(*d*) prescribe forms for proceedings in those courts, and for the mode of keeping book entries or accounts by the officers of the courts; and
(*e*) settle tables of fees to be allowed to the sheriffs, attorneys, clerks, and officers of the courts [6].

But these rules, forms, and tables are to be subject to the previous approval of the Government of India or of the local Government [6].

The business of the high courts is distributed among single judges and division courts in accordance with rules of court, subject to any provision which may be made by Act of the Governor-General in Council [7].

The Governor-General in Council may by order alter the local limits of the jurisdiction of the several high courts, and authorize them to exercise jurisdiction over Christian subjects of Her Majesty resident in Native States [8].

[1] Digest, s. 97. [2] Ibid. 99. [3] Ibid. 100. [4] See below, p. 351.
[5] Digest, s. 101. [6] Ibid. 102. [7] Ibid. 103. [8] Ibid. 104.

The old enactments requiring the high courts, in the exercise of their original jurisdiction with reference to certain matters of which the most important are inheritance and succession, when both parties are subject to the same law or custom, to decide according to that law or custom, and when they are subject to different laws or customs, to decide according to the law of the defendant, are still in force, subject to such modifications as have been or may be made by Indian legislation [1].

Traces of the old conflicts between the supreme court and the governor-general's council are still to be found in enactments which exempt the governor-general and the governors of Madras and Bombay and members of their council from the original jurisdiction of the high courts in respect of anything counselled, ordered, or done by any of them in their public capacity, from liability to arrest or imprisonment in any civil proceeding in a high court, and from being subject to the criminal jurisdiction of a high court in respect of any misdemeanour at common law or under any Act of Parliament [2]. Nor are the high courts to exercise original jurisdiction in revenue matters [3].

Jurisdiction of English courts over offences in India.

The highest officials in India are exempted from the jurisdiction of the Indian high courts, but under enactments which are still in force [4] certain offences by persons holding office under the Crown in India are expressly made punishable as misdemeanours by the high court in England. These offences are:—

(1) Oppression of any of Her Majesty's subjects;
(2) Wilful breach or neglect of the orders of the Secretary of State;
(3) Wilful breach of the trust and duty of office;
(4) Trading; and
(5) Receipt of presents.

Under an Act of 1797 (37 Geo. III, c. 142, s. 28), any

[1] Digest, s. 108.
[2] Ibid. 105.
[3] Ibid. 101.
[4] Ibid. 117.

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British subject[1] who, without the previous consent in writing of the Secretary of State in Council, or of the Governor-General in Council, or of a local Government, is concerned in any loan to a native prince, is guilty of a misdemeanour.

Any of these offences may be tried and punished in England, but the prosecution must be commenced within five years after the commission of the offence or the arrival in the United Kingdom of the person charged, whichever is later[2].

The army in India.

Supreme authority over the army in India is vested by law in the Governor-General in Council[3]. The military member of council has charge of the Military Department, which corresponds to the War Office in England. Subject to the administrative control of the Governor-General in Council, the chief executive officer of the army is the commander-in-chief of her Majesty's Forces in India. Under the system in force before the changes introduced by the Act of 1893 he held special command of the troops in the Bengal Presidency, and exercised a general control over the armies of Madras and Bombay. Each of these armies had a local commander-in-chief, who might be, and in practice always was, appointed a member of the governor's executive council, and the local Government of the presidency had certain administrative powers in military matters. This system of divided control led to much inconvenience, and by an Act of 1893 (56 & 57 Vict. c. 62) the offices of the provincial commanders-in-chief were abolished, and the powers of military control vested in the Governments of Madras and Bombay were transferred to the Government of India.

The administrative arrangements under the new Act came into force on April 1, 1895. The Army of India is now

[1] This probably means any European British subject. See Digest, s. 118.

[2] This is the period fixed by 21 Geo. III, c. 70, s. 7. But the period under 33 Geo. III, c. 52, s. 141, is six years from the commission of the offence, and a shorter period is fixed by the general Act, 56 & 57 Vict. c. 61. See Digest, s. 119.

[3] See ibid. 36.

divided into four great commands, each under a lieutenant-general, the whole being under the direct command of the commander-in-chief in India and the control of the Government of India.

The army in India consists, first, of Her Majesty's forces, which are under the Army Act, and, secondly, of the native troops, of which the British officers are under the Army Act, whilst the remainder are under the Indian Articles of War, an Act of the Indian Legislature[1]. In 1897 the total strength was nearly 230,000 men of all arms, of whom rather more than 73,000 were British. This is exclusive of the active reserve, in process of formation, consisting of men who have served with the colours in the Native Army from five to twelve years, and numbering now about 17,000 men[2], and of the volunteers, about 29,000 in number, enrolled under the Indian Volunteers Acts (XX of 1869, as amended by X of 1896).

The British officers of the Native Army are taken from the Indian Staff Corps. A staff corps for each of the three armies of Bengal, Madras, and Bombay was established in 1861, when the Native Army was reorganized. The officers of the corps were, in the first instance, transferred from the East India Company's army, and were subsequently drawn from British regiments. In 1891 the three staff corps were amalgamated into a single body, and the Indian Staff Corps now includes about 2,400 officers. The corps is recruited partly by young officers from British regiments and batteries in India, and partly by the appointment of candidates from the Royal Military College, Sandhurst, to an unattached list. After a year's duty with a British regiment in India, and another year's duty with a Native regiment, and after passing examinations in the native language and in professional subjects, an officer on the unattached list is admitted into the staff corps. He is then eligible for staff

[1] Act V of 1869, as amended by Act XII of 1894.

[2] Strachey, India, p. 349.

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employment or command in any part of India. The officers of the staff corps are employed not only in the Native Army and in military appointments on the staff, but also in a large number of civil posts. They hold the majority of appointments in the Political Department, and many administrative and judicial offices in non-regulation provinces[1].

Ecclesiastical establishment.

The Charter Acts of 1813 and 1833 provided for the appointment of bishops at Calcutta, Madras, and Bombay, and conferred on them ecclesiastical jurisdiction and power to admit to holy orders. These provisions are still in force[2], but the bishops who have been since appointed for other Indian dioceses, such as the diocese of Lahore, do not derive their authority from any Act of Parliament. The salaries, allowances, and leaves of absence of the Indian bishops and archdeacons are regulated by the Queen or by the Secretary of State in Council[3].

Subsidiary provisions.

The provisions summarized above include all the matters relating to the administration of India which are regulated by Act of Parliament, with the exception of some minor points relating to salaries, leave of absence, temporary appointments, and the like.

The salaries and allowances of the governor-general and the governors of Madras and Bombay, and of their respective councils, of the commander-in-chief, and of lieutenant-governors, are fixed by order of the Secretary of State in Council, subject to limits imposed by Act of Parliament[4].

Return to Europe vacates the offices of the governor-general, of the governors of Madras and Bombay, and the members of their respective councils, and of the commander-in-chief[5], except that members of council can obtain six months' leave of absence on medical certificate[6].

[1] Strachey, India, p. 347.

[2] Digest, ss. 110–112.

[3] Ibid. 113, 114.

[4] Ibid. 80.

[5] Ibid. 82. The precise effect of the enactments reproduced by this section is far from clear.

[6] Ibid. 81.

There is power to make conditional appointments to the offices of governor-general, governor, and member of council [1].

If a vacancy occurs in the office of governor-general when there is no successor or conditional successor on the spot, the Governor of Madras or Bombay, whichever is senior in office, fills the vacancy temporarily [2]. A temporary vacancy in the office of Governor of Madras or Bombay is filled by the senior member of council [3]. Provision is also made for filling temporary vacancies in the offices of ordinary or additional members of council.

Absence on sick leave or furlough of persons in the service of the Crown in India is regulated by rules made by the Secretary of State in Council [4]. The distribution of patronage between the different authorities may also be regulated in like manner [5].

Subordinate administrative arrangements.

The subordinate administrative arrangements of each province depend, not on Acts of Parliament, but on Indian laws or administrative regulations.

The old distinction between regulation and non-regulation provinces [6] has become obsolete, but traces of it remain in the nomenclature of the staff [7], and in the qualifications for administrative posts [8]. The corresponding distinction in modern practice is between the parts of British India which are governed by Acts of the central or local legislatures, and the less advanced districts to which regulations made under the Government of India Act, 1870 (33 Vict. c. 3), apply.

The nomenclature of the civil staff and the distribution of work differs somewhat in the different provinces. Thus the lieutenant-governor has no executive council like the governors of Madras and Bombay, but has the help of

[1] Digest, s. 83. [2] Ibid. 85. [3] Ibid. 86.
[4] Ibid. 89. [5] Ibid. 90. [6] See above, p. 105.

[7] In the old non-regulation provinces, such as the Punjab, the district magistrate is called deputy commissioner instead of collector.

[8] The schedule of appointments reserved by 24 & 25 Vict. c. 54 to members of the covenanted civil service does not apply to the old non-regulation provinces.

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a Board of Revenue in Bengal and the North-Western Provinces and of financial commissioners in the Punjab and Burma. In each province there is a secretariat manned according to the administrative requirements. In Bombay, Bengal, the North-Western Provinces, the Punjab, the Central Provinces, Burma, and Assam, the province is divided into divisions, each under a commissioner, and each comprising several districts. In Madras there is a Board of Revenue in addition to the executive council, but there are no divisional commissioners.

The district and the district magistrate.

The most important unit of administration throughout British India is the district, at the head of which is an officer, called in the old regulation provinces the collector, and in the non-regulation provinces the deputy commissioner. There are at present 249 districts in British India, exclusive of the Andamans, British Beloochistan, and the newly settled territory of the Lushai tribes. These districts vary considerably in area and population, from the Simla district in the Punjab with 102 square miles to the Upper Khyndwin in Burma with approximately 19,000 square miles, and from the hill district of North Arakan with a population of 14,600 to Maimansingh with a population of 3,472,000.

In the North-Western Provinces and Oudh, which Sir John Strachey has described as a typical Indian province, the district has an average area of 1,500 or 2,000 square miles, with a population of 750,000 to 1,500,000. This is about the area and population of one of the largest English counties. But in several provinces, and especially in Madras, the district is much larger[1].

At the head of this district stands the collector or deputy commissioner, who is the local representative of the Government, and whose position corresponds more nearly to that of the French *préfet* than to that of any English functionary[2].

[1] Strachey, India, p. 283.

[2] For his various duties, see ibid. p. 283; East India (Progress and Condition) (Decennial Report), 1894, p. 71.

He has assistants and deputies varying in number, title, and rank, and his district is subdivided for administrative purposes into charges which bear different names in different parts of the country[1]. In the North-Western Provinces he would be aided by a joint magistrate and an assistant magistrate, both of whom would, as a rule, be Englishmen, and the latter of whom would often be a young civilian learning his work. The other chief officers of his executive staff would be deputy collectors and deputy magistrates, who are almost always natives of India[2].

Municipal and district council.

Under various Acts of the central and local Indian legislatures municipal and district councils have been established in the several provinces of India with limited powers of local taxation and administration. This system of local government received a considerable extension under the viceroyalty of Lord Ripon[3].

Subordinate judicial arrangements.

For each of the provinces not under the jurisdiction of a chartered high court, there is a high court within the meaning of the Indian General Clauses Act (X of 1897, s. 3 (24)), consisting in the Punjab of a chief court with either four or five judges, and elsewhere of a judicial commissioner. These high courts, like the chartered high courts, are courts of appeal from the district courts, civil and criminal, and the decision of any high court is final, except in certain cases in which an appeal lies to the Judicial Committee of the Privy Council in England[4]. Sentences of death require the confirmation of the high court.

'The high courts exercise constant supervision over all the subordinate courts. Elaborate returns are regularly sent to them at short intervals, showing in great detail the

[1] East India (Progress and Condition), 1894, p. 72.

[2] Strachey, India, p. 255.

[3] See Government of India Acts I, XIV, XV, and XX of 1883, XIII and XVII of 1884; Bengal Act III of 1884; Bombay Acts I and II of 1884; Madras Acts IV and V of 1884.

[4] The right and conditions of appeal are regulated by the charters of the chartered high courts, which are supplemented, as to civil cases, by the Code of Civil Procedure (ss. 594, 616).

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business disposed of, and, as the whole of the evidence in every case, or a memorandum of its substance, has to be taken down by the judges or magistrates with their own hands, and a record made of every order that is passed, the high courts are able, by examining the returns, by sending for proceedings and calling for explanation, as well as from the cases that come before them in appeal, to keep themselves acquainted with the manner in which all the courts are discharging their duties[1].'

Subordinate criminal courts.

The judicial arrangements under the Indian Code of Criminal Procedure are as follows[2]:—

In every province there are a certain number of divisions, in each of which a court of sessions is established, presided over by a sessions judge. Additional, joint, and assistant sessions judges may be appointed. Every sessions division consists of one or more districts, to each of which a magistrate, called the district magistrate, is attached. Any number of subordinate magistrates that may be required are appointed in the district, subject to the general control of the district magistrate. In the towns of Calcutta, Madras, and Bombay there are magistrates called presidency magistrates. To enable a magistrate or judge to exercise jurisdiction over European British subjects, he must be appointed a justice of the peace, and a justice of the peace must himself be a European British subject. There are certain exceptions to this rule. The judges of the high courts, the sessions judges, district magistrates, and presidency magistrates are justices of the peace *ex-officio*, and the law does not require that they shall be European British subjects.

A high court may pass any sentence authorized by the Penal Code or other law. All trials before the high court are by jury. A sessions judge may pass any sentence authorized by law, but sentences of death are subject to confirmation by the high court. All trials before the court

[1] Strachey, India, p. 78.

[2] This summary is taken from ibid. p. 79.

of session are either by jury or with assessors, according to orders made by the local Government.

There are three classes of magistrates:—

(1) Courts of presidency magistrates, and of magistrates of the first class, in which district magistrates are included. These can pass sentences of imprisonment not exceeding two years, and of fine not exceeding 1,000 rupees. In cases where these courts are not competent finally to decide, they commit for trial to the court of session or high court.

(2) Courts of magistrates of the second class. They can pass sentence of imprisonment not exceeding six months, or of fine not exceeding 200 rupees.

(3) Courts of magistrates of the third class. They can pass sentence of imprisonment not exceeding one month, or of fine not exceeding 50 rupees.

In certain cases and under certain restrictions, magistrates of the first class, or, if specially so empowered, magistrates of the second class, can pass sentences of whipping.

Subordinate civil courts.

The constitution of the subordinate civil courts is regulated by local Acts.

In Bengal, the North-Western Provinces, and Assam, there are, under Act XII of 1887, the following classes of civil courts:—

(1) The court of the district judge;
(2) The court of the additional judge;
(3) The court of the subordinate judge; and
(4) The court of the munsif.

The jurisdiction of district judges, additional judges, and subordinate judges extends to all original suits for the time being cognizable by civil courts. The jurisdiction of the munsif is limited to suits of which the value does not exceed 1,000 rupees.

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In the Madras Presidency, under Act III of 1873, there are district judges, subordinate judges, and district munsifs, but the extent of their jurisdiction is regulated by the local Government.

In the Bombay Presidency, under Act XIV of 1869, there are district judges, joint judges, assistant judges, and subordinate judges of two classes. The jurisdiction of a subordinate judge of the second class is limited to suits where the value does not exceed 5,000 rupees.

In the Punjab, under Act XVIII of 1884, there are divisional judges, district judges, subordinate judges, and munsifs, and the jurisdiction of a munsif is limited to suits of which the value does not exceed 1,000 rupees.

In the Central Provinces, under Act XVI of 1885, there are the following classes of courts, namely, beginning with the highest grade:—

(*a*) the court of the judicial commissioner;
(*b*) the court of the commissioner;
(*c*) the court of the deputy commissioner;
(*d*) the court of the assistant commissioner of the first class;
(*e*) the court of the assistant commissioner of the second class;
(*f*) the court of the assistant commissioner of the third class;
(*g*) the court of the tahsíldár of the first class;
(*h*) the court of the tahsíldár of the second class.

But there is power for the chief commissioner to appoint judicial assistants to the different classes of judges.

In Lower Burma, under Act XI of 1889, there are, besides the courts of small causes, the court of the Recorder of Rangoon, the special court constituted by the judicial commissioner and the recorder sitting together, and the courts established under the Arakan Hills Civil Justice Regulation Act, 1874, six grades of civil courts, namely, beginning with the lowest grade:—

(*a*) the court of the Myo-ôk;
(*b*) the courts of the extra assistant commissioner and the assistant commissioner;
(*c*) the court of the deputy commissioner;
(*d*) the court of the judge of the town of Moulmein;
(*e*) the court of the commissioner; and
(*f*) the court of the judicial commissioner.

The jurisdiction of all these courts is subject to a general provision in s. 15 of the Code of Civil Procedure (XIV of 1882), that every suit must be instituted in the court of the lowest grade competent to try it.

The right of appeal is usually regulated by the special Act, and is subject to the general provision contained in s. 584 of the Code of Civil Procedure, under which, as a general rule, a second appeal lies to the high court on any of the following grounds, namely,—

(*a*) the decision being contrary to some specified law or usage having the force of law;
(*b*) the decision having failed to determine some material issue of law or usage having the force of law;
(*c*) a substantial error or defect in the procedure as prescribed by the code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

The jurisdiction is also subject to the general powers of revision exercisable by the high court. Complaints have frequently been made that the restrictions on the right of appeal have been evaded by recourse to the powers of revision.

The procedure generally is regulated by the Code of Civil Procedure.

The Native States.

India, as defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and by the Indian General Clauses Act (X of 1897, s. 3 (27)), includes not only the territories comprised in British India, that is to say, the territories under the

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direct sovereignty of the Crown, but also the territories of the dependent Native States. These are upwards of 600 in number. They cover an area of nearly 600,000 square miles, and contain a population of about 66,300,000. Their total revenues are estimated at nearly Rx. 20,000,000[1]. They differ from each other enormously in magnitude and importance. The Nizam of Hyderabad rules over an area of 83,000 square miles and a population of 11,500,000. There are petty chiefs in Kathiawar whose territory consists of a few acres[2].

Division of sovereignty.

The territory of these States is not British territory. Their subjects are not British subjects. The sovereignty over them is divided between the British Government and the ruler of the Native State in proportions which differ greatly according to the history and importance of the several States, and which are regulated partly by treaties or less formal engagements, partly by sanads or charters, and partly by usage. The maximum of sovereignty enjoyed by any of their rulers is represented by a prince like the Nizam of Hyderabad, who coins money, taxes his subjects, and inflicts capital punishment without appeal. The minimum of sovereignty is represented by the lord of a few acres in Kathiawar, who enjoys immunity from British taxation, and exercises some shadow of judicial authority.

General control by British Government.

But in the case of every Native State the British Government, as the paramount Power,—

(1) exercises exclusive control over the foreign relations of the State;

(2) assumes a general, but limited, responsibility for the internal peace of the State;

(3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and

[1] Rx = tens of rupees.

[2] On this subject see generally:—Tupper, Our Indian Protectorate; Lee-Warner, Protected Princes of India; Strachey, India, ch. xxiv; Westlake, Chapters on Principles of International Law, ch. x; and below, Chapter vii.

(4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order.

Control over foreign relations.

It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of the British Government on the application of the parties to the dispute. It cannot initiate or maintain diplomatic relations with any foreign Power in Europe, Asia, or elsewhere. It cannot send a diplomatic or consular officer to any foreign State. It cannot receive a diplomatic or consular officer from any foreign State. Any attempt by the ruler of a Native State to infringe these rules would be a breach of the duty he owes to the Queen-Empress. Any attempt by a foreign Power to infringe them would be a breach of international law. Hence, if a subject of a Native State is aggrieved by the act of a foreign Power, or of a subject of a foreign Power, redress must be sought by the British Government; and, conversely, if a subject of a foreign Power is aggrieved by the act of a Native State, or of any of its subjects, the foreign Power has no direct means of redress, but must proceed through the British Government. Consequently the British Government is in some degree responsible both for the protection of the subjects of Native States when beyond the territorial limits of those States, and for the protection of the subjects of foreign Powers when within the territorial limits of Native States. And, as a corollary from this responsibility, the British Government exercises control over the protected class of persons in each case.

The British Government has recognized its responsibility

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for, and asserted its control over, subjects of Native Indian States resorting to foreign countries by the Orders in Council which have been made for regulating the exercise of British jurisdiction in Zanzibar, Muscat, and elsewhere. By these orders provision is made for the exercise of jurisdiction, not only over British subjects in the proper sense, but also over British-protected subjects, that is, persons who by reason of being subjects of princes and States in India in alliance with Her Majesty, or otherwise, are entitled to British protection. And the same responsibility is recognized in more general terms by a section in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), which declares that where any Order in Council made in pursuance of the Act extends to persons enjoying Her Majesty's protection, that expression is to include all subjects of the several princes and States in India.

Power to maintain peace.

The consequences which flow from the duty and power of the British Government to maintain order and peace in the territories of Native States are developed at length by Mr. Tupper and Mr. Lee-Warner. The guarantee to a native ruler against the risk of being dethroned by insurrection necessarily involves a corresponding guarantee to his subjects against intolerable misgovernment. The degree of misgovernment which should be tolerated, and the consequences which should follow from transgression of that degree, are political questions to be determined with reference to the circumstances of each case.

Special responsibility for British subjects in Native States.

The special responsibility assumed by the British Government for the safety and welfare of British subjects, whether English or Indian, within the territories of Native States, involves the exercise of very extensive jurisdiction within those territories. The territories of British India and of the Native States are inextricably interlaced. The territories of the Native States are intersected by British railway lines, postal lines, and telegraph lines. British subjects, European and Indian, freely and extensively resort to and reside in

Native territory for purposes of trade and otherwise. For each Native State there is a British political officer, representing the civil authority exercised by the paramount power, and in each of the more important States there is a resident political officer with a staff of subordinates. Detachments of British troops occupy cantonments in all the more important military positions.

For the regulation of the rights and interests arising from this state of things an extensive judicial machinery is required. It varies in character in different places, and its powers are not everywhere based on the same legal principles. For the proper control of the railway staff it has sometimes been found necessary to obtain a formal cession of the railway lands. In other cases, a cession of jurisdiction within those lands has been considered sufficient. The jurisdiction exercised in cantonments has been sometimes based on the extra-territorial character asserted for cantonments under European international law. And a similar extra-territorial character may be considered as belonging to the residencies and other stations occupied by political officers[1].

Subordinate military co-operation.

The duty incumbent on Native States of subordinate co-operation in the task of resisting foreign aggression has been recognized and emphasized by arrangements which were made during Lord Dufferin's viceroyalty with several of these States for maintaining a number of selected troops in such a condition of efficiency as will make them fit to take the field side by side with British troops. Other States have engaged to furnish transport corps. The total number of these contingents is about 18,000 men. The officers and men are, to a great extent, natives of the State to which they belong, and are under the command of the ruler of that State, but they are inspected and advised by British officers[2].

Exceptional position of

The result of all these limitations on the powers of the Native Indian States is that, for purposes of international law,

[1] See below, Chapter vii.

[2] Strachey, India, p. 355.

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they occupy a very special and exceptional position. 'The principles of international law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the sovereignty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter' (Gazette of India, No. 1700 E, August 21, 1891).

CHAPTER III

DIGEST OF STATUTORY ENACTMENTS RELATING TO THE GOVERNMENT OF INDIA

N.B.—The marginal references in square brackets [ ] indicate the enactments reproduced.

PART I.

THE SECRETARY OF STATE IN COUNCIL.

The Crown.

Government of India by the Crown. [21 & 22 Vict. c. 106, s. 2.]

1.—(1) British India(*a*) is governed by and in the name of Her Majesty the Queen (*b*).

(2) All rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of Her Majesty as rights incidental to the government of British India(*c*).

(*a*) The expressions 'British India' and 'India' are defined by s. 124 of this Digest, in accordance with the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and the Indian General Clauses Act (X of 1897, s. 3 (7) (27)).

The language used in the Act of 1833 (3 & 4 Will. IV, c. 85, s. 1) was: 'the territories *now* in the possession and under the government of the said company.' A similar expression was used in the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 22). Hence questions arose as to the application of the Acts to territories subsequently acquired. Those questions have, however, now been set at rest by s. 3 of the Indian Councils Act, 1892 (55 & 56

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Vict. c. 14), which expressly declares the applicability of the Acts of 1833 and 1861 to territories subsequently acquired.

(*b*) The Royal Titles Act, 1876 (39 & 40 Vict. c. 10), authorized the Queen, with a view to the recognition of the transfer of the government of India from the East India Company to the Crown, by Royal Proclamation, to make such addition to the style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies as to Her Majesty might seem meet. Accordingly the Queen, by proclamation dated April 28, 1876, added to her style and titles the words, 'Indiae Imperatrix, or Empress of India.' (London Gazette, April 28, 1876, 2667.)

(*c*) These rights include the right to acquire and cede territory. See *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1, and p. 37 above, and note (*a*) to s. 36 below.

The Secretary of State.

The Secretary of State. [21 & 22 Vict. c. 106, s. 3.]

2.—(1) Subject to the provisions embodied in this Digest, one of Her Majesty's principal Secretaries of State (in this Digest referred to as 'the Secretary of State') has and performs all such or the like powers and duties in anywise relating to the government or revenues of India (*a*), and all such or the like powers over all officers appointed or continued under the Government of India Act, 1858, as, if that Act had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone (*b*).

[3 & 4 Will. IV, c. 85, s. 25.]

(2) In particular, the Secretary of State may, subject to the provisions embodied in this Digest, superintend, direct, and control all acts, operations, and concerns which in anywise relate to or concern the government or revenues of India, and all grants of salaries, gratuities, and allowances, and all other payments and charges whatever out of or on the revenues of India.

[21 & 22 Vict. c. 106, s. 3.]

(3) Any warrant or writing under Her Majesty's Royal Sign Manual which, before the passing of the Government of

India Act, 1858, was required by law to be countersigned by the president of the Commissioners for the Affairs of India must in lieu thereof be countersigned by the Secretary of State (*c*).

(4) There are paid out of the revenues of India to the Secretary of State and to his under secretaries respectively, the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively (*d*). [21 & 22 Vict. c. 106, s. 6.]

(*a*) The term 'revenues of India' is retained here and elsewhere, though in an Act of Parliament it might now be more accurate to speak of the revenues of *British* India.

(*b*) The Secretary of State is the minister through whom the authority of the Crown over India is exercised in England, and thus corresponds roughly to the president of the Board of Control (Commissioners for the Affairs of India), under the system which prevailed before the Act of 1858. He is appointed by the delivery of the seals of office, and appoints two under secretaries, one permanent, who is a member of the Civil Service, the other parliamentary, who changes with the Government. The Act of 1858 authorized the appointment of a fifth principal Secretary of State, in addition to the four previously existing (Home, Foreign, Colonial, and War).

The office of Secretary of State is constitutionally a unit, though there are five officers. Hence any Secretary of State is capable of performing the functions of any other, and consequently it is usual and proper to confer statutory powers in general terms on 'a (or "the") Secretary of State,' an expression which is defined by the Interpretation Act, 1889, as meaning one of Her Majesty's principal Secretaries of State. But in matters relating to India there are certain functions which must be exercised by the Secretary of State *in Council*. See Anson, Law and Custom of the Constitution (second edition), ii. pp. 167, 282.

(*c*) See e. g. the provisions as to removal of officers below, s. 21.

(*d*) i. e. £5,000 to the Secretary of State, £2,000 to the permanent Under Secretary, and £1,500 to the Parliamentary Under Secretary.

The Council of India.

3.—(1) The Council of India consists of not more than fifteen and not less than ten members (*a*). The Council of India.

(2) The right of filling any vacancy in the Council of India is vested in the Secretary of State. [21 & 22 Vict. c. 106, ss. 7,

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10, 11, 13. 32 & 33 Vict. c. 97, ss. 1, 2, 3, 6. 52 & 53 Vict. c. 65.]

(3) Unless at the time of an appointment to fill a vacancy in the Council of India nine of the then existing members of the council are persons who have served or resided in British India (*b*) for at least ten years, and have not last left British India more than ten years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council of India holds office, except as by this section provided, for a term of ten years.

(5) The Secretary of State may for special reasons of public advantage reappoint for a further term of five years any member of the Council of India whose term of office has expired. In any such case the reasons for the reappointment must be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council of India is not capable of reappointment.

[39 & 40 Vict. c. 7.]

(6) The Secretary of State may also, if he thinks fit, appoint any person having professional or other peculiar qualifications to be a member of the Council of India during good behaviour. The special reasons for every such appointment must be stated in a minute signed by the Secretary of State and laid before both Houses of Parliament. Not more than three persons so appointed may be members of the council at the same time. If a member so appointed resigns his office, and has at the date of his resignation been a member of the council for more than ten years, the Queen may, by warrant under Her Sign Manual, countersigned by the Chancellor of the Exchequer, grant to him, out of the revenues of India, a retiring pension during life of five hundred pounds (*c*).

(7) Any member of the Council of India may, by writing signed by him, resign his office. The instrument of resignation must be recorded in the minutes of the council.

(8) Any member of the Council of India may be removed by Her Majesty from his office on an address of both Houses of Parliament.

(9) There is paid to each member of the Council of India out of the revenues of India the annual salary of twelve hundred pounds.

(*a*) The Council of India is, in a certain, but very limited, sense, the successor of the old Court of Directors. Under the Act of 1858 it consisted of fifteen members, eight appointed by the Crown, and seven elected, in the first instance, by the Court of Directors, and subsequently by the council itself. The members of the council held office during good behaviour, but were removable on an address by both Houses of Parliament. By an Act of 1869 (32 & 33 Vict. c. 97) the right of filling all vacancies in the council was vested in the Secretary of State, and the tenure was changed from tenure during good behaviour to tenure for a term of ten years, with a power of reappointment for five years, 'for special reasons.' By an Act of 1889 (52 & 53 Vict. c. 65) the Secretary of State was authorized to abstain from filling vacancies in the council until the number should be reduced to ten. The existing number of the council is twelve.

(*b*) It will be observed that service or residence in *British* India, not in India, is the qualification.

(*c*) This exceptional power, which was conferred by an Act of 1876 (39 & 40 Vict. c. 7), was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to his case.

4. A member of the Council of India is not capable of sitting or voting in Parliament.

Seat in council disqualification for Parliament. [21 & 22 Vict. c. 106, s. 12.]

It is perhaps open to question whether under this enactment a seat in the council is incompatible with a seat in the House of Lords.

5. If at any time it appears to Parliament expedient to reduce the number or otherwise to deal with the constitution of the Council of India, a member of that council is not entitled to claim any compensation for the loss of his office, or for any alteration in the terms and conditions under which his office is held, unless he has served in his office for a period of ten years.

Claims to compensation. [32 & 33 Vict. c. 97, s. 7.]

This enactment is contained in the Act of 1869 which changed the tenure of members of council.

6. The Council of India, under the direction of the Secretary of State, and subject to the provisions embodied in this Digest, conducts the business transacted in the United

Duties of council. [21 & 22 Vict. c. 106, s. 19.]

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Powers of council. [21 & 22 Vict. c. 106, s. 22.]

7.—(1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, may be exercised at meetings of the council at which not less than five members are present.

(2) The Council of India may act notwithstanding any vacancy in their number.

President and vice-president of council. [21 & 22 Vict. c. 106, ss. 21, 22.]

8.—(1) The Secretary of State is the president of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the Council of India to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council of India the Secretary of State, or in his absence the vice-president, if present, or in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, presides.

Meetings of the council. [21 & 22 Vict. c. 106, s. 22.]

9. Meetings of the Council of India are convened and held when and as the Secretary of State directs, but one such meeting at least must be held in every week.

Procedure at meetings. [21 & 22 Vict. c. 106, s. 23.]

10.—(1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except (*a*) a question with respect to which a majority of votes at a meeting is by this Digest declared to be necessary, the determination of the Secretary of State is final.

(2) In case of an equality of votes at any meeting of the council the person presiding at the meeting has a casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in

the minutes of the proceedings, and any member of the council who has been present at the meeting may require that his opinion and any reasons for it that he has stated at the meeting be also entered in like manner.

(*a*) A majority of votes is necessary for decisions on the following matters:—

1. Appropriation of revenues or property, s. 23.
2. Issuing securities for money, s. 28.
3. Sale or mortgage of property, s. 31.
4. Contracts, s. 32.
5. Alteration of salaries, s. 80.
6. Furlough rules, s. 89.
7. Indian appointments, s. 90.
8. Appointments of natives of India to offices reserved for Indian Civil Service, s. 94.
9. Provisional appointments to reserved offices, s. 95.

Committees of council. [21 & 22 Vict. c. 106, s. 20.]

11. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted (*a*).

(*a*) The existing committees are Finance, Political, Military, Revenue and Statistics, Public Works, Stores, and Judicial and Public.

Orders and Dispatches.

Submission of orders, &c., to council, and record of opinions thereon. [21 & 22 Vict. c. 106, ss. 24, 25.]

12.—(1) Subject to the provisions (*a*) embodied in this Digest, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under the Government of India Act, 1858, must, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the Council of India may record, in a minute-book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded must be sent forthwith to the Secretary of State.

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(3) If the majority of the Council of India so record their opinions against any act proposed to be done, the Secretary of State must, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

(*a*) The qualifications relate to urgency orders under s. 13 and secret orders under s. 14.

Provision for cases of urgency. [21 & 22 Vict. c. 106, s. 26.]

13.—(1) Where it appears to the Secretary of State that the dispatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (*a*), is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the Council of India or deposited for the perusal of the members of that council.

(2) In any such case the Secretary of State must, except as by this Digest provided (*b*), record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

(*a*) See note on s. 10.
(*b*) The exception is under the next section, s. 14.

Provision as to secret orders and dispatches. [33 Geo. III, c. 52, ss. 19, 20. 3 & 4 Will. IV, c. 85, s. 36. 21 & 22 Vict. c. 106, s. 27.]

14.—(1) Where an order concerns the levying of war or the making of peace, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and is not an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (*a*), and is an order which in the opinion of the Secretary of State is of a nature to require secrecy, the Secretary of State may send the order to the Governor-General in Council or to any local Government or officer in India without having submitted the order to a meeting of the Council of India or deposited it for the perusal of the members of that council, and without recording or giving notice of the reasons for making the order (*b*).

[33 Geo. III, c. 52, s. 22.]

(2) Where any dispatch from the Governor-General in Council, or from the Governor in Council of Madras or of

Bombay, relates to the like matters, and in the judgement of the authority sending the dispatch is of a nature to require secrecy, it may be marked 'Secret' by the authority sending it; and a dispatch so marked is not to be communicated to the members of the Council of India unless the Secretary of State so directs. [21 & 22 Vict. c. 106, s. 28.]

(*a*) See note on s. 10.

(*b*) The Act of 1784 (24 Geo. III, sess. 2, c. 25), which constituted the Board of Control, directed that a committee of secrecy, consisting of not more than three members, should be formed out of the directors of the Company, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit the orders to India, without informing the other directors. (See above, p. 66.) These directions were reproduced by the Charter Act of 1793 (33 Geo. III, c. 52, ss. 19, 20), and by the Charter Act of 1833 (3 & 4 Will. IV, c. 85, ss. 35, 36). The Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 27), directed that orders which formerly went through the secret committee need not be communicated to the council, unless they were orders for which a majority of votes of the council was required. There are similar provisions as to dispatches *from* India. 'Secret' orders are usually communicated to the Political Committee of the council. (See above, s. 11.)

Signature and address of orders, &c. [21 & 22 Vict. c. 106, s. 19.]

15.—(1) Every order or communication sent to India, and [save as expressly provided by this Digest] every order made in the United Kingdom in relation to the government of India under this Act, must be signed by the Secretary of State (*a*).

(2) Every dispatch from the Governor-General in Council or from the Governor in Council of Madras or of Bombay must be addressed to the Secretary of State (*b*).

(*a*) This reproduces the existing enactment, but of course applies only to official orders and communications. It is not clear to what provisions (if any) the saving refers.

(*b*) This recognizes the right of the Governments of Madras and Bombay to communicate directly with the Secretary of State, a right derived from a time when Madras and Bombay constituted independent presidencies together with the Presidency of Bengal, and before a general Government of India had been established.

Communication to Parliament as

16. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of the order having been sent must, unless the order

CH. III. to orders for commencing hostilities. [21 & 22 Vict. c. 106, s. 54.]

has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.

Correspondence by governor-general with Secretary of State. [13 Geo. III, c. 63, s. 9.]

17. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor-General in Council and relating to the government, commerce, revenues, or affairs of India (*a*).

(*a*) This reproduces an enactment contained in the Regulating Act, 1773, by which Warren Hastings and his successors were directed to correspond regularly with the Court of Directors at home, but its re-enactment would probably not be considered necessary at the present day.

Establishment of Secretary of State.

Establishment of the Secretary of State. [21 & 22 Vict. c. 106, ss. 15 16.]

18.—(1) Her Majesty the Queen may, by Order in Council, fix the establishment of the Secretary of State in Council and the salaries to be paid to the persons on that establishment.

(2) Every such order must be laid as soon as may be before both Houses of Parliament.

(3) No addition may be made to the said establishment, nor to the salaries authorized by any such order, except by a similar Order in Council to be laid in like manner before both Houses of Parliament.

(4) The regulations made by Her Majesty for examinations, certificates, probation, or other tests of fitness in relation to appointments to junior situations in the civil service apply to such appointments on the said establishment.

(5) Subject to the foregoing provisions of this section, the Secretary of State in Council may make all appointments to and promotions in the said establishment, and remove any officer or servant belonging to the establishment (*a*).

(*a*) This is the enactment by which the staff of the India Office is regulated.

Pensions. [21 & 22 Vict. c. 106, s. 18.]

19. Her Majesty may by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer, or servant appointed on the establishment of the Secretary of State in Council such compensation, superannuation, or retiring allowance as may be granted to persons on the establishment of a Secretary of State under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service (*a*).

(*a*) This gives the staff of the India Office pensions on the civil service scale, i.e. one-sixtieth of annual salary for each year of service, subject to certain conditions and restrictions.

Indian Appointments.

Indian appointments. [21 & 22 Vict. c. 106, ss. 33, 35. 23 & 24 Vict. c. 100, s. 1.]

20.—(1) In any regulations for the time being in force for the organization of the Indian Army provision must be made for the benefit of the sons of persons who have served in India in the military or civil service of the Crown or of the East India Company equally advantageous with those which were in force before the twentieth day of August one thousand eight hundred and sixty, and the selection of such persons is to be in accordance with regulations made by the Secretary of State (*a*).

[21 & 22 Vict. c. 106, s. 37.]

(2) Except as provided by this Digest, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council.

(*a*) Sections 33, 34, 35, and 36 of the Government of India Act, 1858, run as follows:—

'33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise expressly provided for, shall be vested in Her Majesty; and the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

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'34. Regulations shall be made for admitting any persons, being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf), who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations.

'35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served in India in the military or civil service of Her Majesty, or of the East India Company.

'36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and members of council, so that out of seventeen nominations the Secretary of State shall have two, and each member of council shall have one; but no person so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.'

When the Government of India Act, 1858, passed, and for some years afterwards, the Indian Army (taking European and Native together) was officered in two ways. A certain number of cadets were appointed to Addiscombe, and thence, according to their success in passing the college examination, went to India in the engineers, artillery, or infantry. Others received direct cadetships, and went to India without previous training. The Act speaks of both classes alike as receiving cadetships. But the artillery and engineers were not in practice taken into account in calculating the one-tenth under s. 35. This being so, the effect of s. 35 was, roughly speaking, that one-tenth of the officers appointed to the Indian Army (exclusive of the engineers and artillery) must be the sons of Indian servants.

The Act of 1860 (23 & 24 Vict. c. 100), which abolished the European Army, and which was passed on August 20, 1860, provided that 'the same or equal provision for the sons of persons who have served in India shall be maintained in any plan for the reorganization of the Indian Army.' The mode of appointment to the Native Army was meantime altered. In pursuance of this provision, an order was issued in 1862, under which the Secretary of State makes appointments to cadetships at Sandhurst, fixed at twenty annually, limited to the sons of Indian servants. The expenses of these cadets are borne by India, if their pecuniary circumstances are such as to justify the payment. Regulations as contemplated by s. 35 of the Government of India Act, 1858, have been made governing the selection, and are rigidly followed. These cadetships differ from the old ones in that they are not directly

and necessarily connected with the Indian Army, for a cadet might pass from Sandhurst into the British Army and not into the staff corps. But the object is, of course, to supply the Indian Army. The word 'cadet' in the Government of India Act has no express limitation, and the present cadets appear to fall within the meaning of the term. In practice, appointments of cadets do not now go to the Queen.

Section 34 appears to be spent, and s. 36 to be virtually repealed by the abolition of the Indian Army. The effect of the other two sections, so far as they are in force, is reproduced in the Digest.

Powers of Crown and Secretary of State as to removal of officers. [33 Geo. III, c. 52, ss. 35, 36. 3 & 4 Will. IV, c. 85, ss. 74, 75. 21 & 22 Vict. c. 106, s. 38.]

21.—(1) Her Majesty may, by writing under the Royal Sign Manual, countersigned by the Secretary of State, remove or dismiss any person holding office under the Crown in India.

(2) A copy of any writing under the Royal Sign Manual removing or dismissing any such person must, within eight days after the signature thereof, be communicated to the Secretary of State in Council.

(3) Nothing in this enactment affects [any of Her Majesty's powers over any officer in the army, or] the power of the Secretary of State in Council [or of any authority in India] to remove or dismiss any such person.

This is an attempt to reproduce the net result of a series of enactments, which are still in the statute book, but the earlier of which were intended to give the Crown power over servants of the East India Company, and, therefore, are not wholly applicable to existing circumstances. The saving words in square brackets do not reproduce any existing enactment, but seem to be required.

The Charter Act of 1793 (33 Geo. III, c. 52) enacted (ss. 35, 36) that:—

'35. It shall and may be lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the president of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said united Company in India for the time being, and to vacate and make void all or every or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments; and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and

CH. III. specified in that behalf: Provided always, that a duplicate or copy of every such writing or instrument under His Majesty's sign manual, attested by the said president for the time being, shall, within eight days after the same shall be signed by His Majesty, his heirs or successors, be transmitted or delivered to the chairman or deputy chairman for the time being of the said Company, to the intent that the Court of Directors of the said Company may be apprised thereof.

'36. Provided always, . . . that nothing in this Act contained shall extend or be construed to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants at their will and pleasure, in the like manner as if this Act had not been made, any governor-general, governor, or commander-in-chief appointed by His Majesty, his heirs or successors, through the default of appointment by the said Court of Directors, always excepted, anything herein contained to the contrary notwithstanding.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, ss. 74, 75) enacted that—

'74. It shall be lawful for His Majesty by any writing under his sign manual, countersigned by the president of the said Board of Commissioners, to remove or dismiss any person holding any office, employment, or commission, civil or military, under the said Company in India, and to vacate any appointment or commission of any person to any such office or employment.

'75. Provided always, that nothing in this Act contained shall take away the power of the said Court of Directors to remove or dismiss any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure.'

And finally the Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 38), enacts that:—

'Any writing under the Royal Sign Manual, removing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the Court of Directors, shall in lieu thereof be communicated within the time aforesaid to the Secretary of State in Council.'

The countersignature of the Secretary of State was substituted for the countersignature of the president of the Board of Control by the Government of India Act, 1858. (See above, s. 2.)

The tenure of persons serving under the Government of India, or under a local Government, is presumably tenure during the

pleasure of the Crown. In the case of *Grant* v. *The Secretary of State for India in Council*, L. R. 2 C. P. D. 455 (1877), the plaintiff, formerly an officer in the East India Company's service, appointed in 1840, and subsequently continuing in the Indian Army when the Indian military and naval forces were transferred to the Crown, brought an action against the defendant for damages for being compulsorily placed by the Government upon the pension list, and so compelled to retire from the army. It was held on demurrer that the claim disclosed no cause of action, because the Crown acting by the defendant had a general power of dismissing a military officer at its will and pleasure, and that the defendant could make no contract with a military officer in derogation of this power. In the case of *Shenton* v. *Smith* (1895), A. C. 229, which was an appeal from the Supreme Court of Western Australia, it was held that a Colonial Government is on the same footing as the Home Government with respect to the employment and dismissal of servants of the Crown, and that these, in the absence of special contract, hold their offices during the pleasure of the Crown. The respondent in that case, having been gazetted without any special contract to act temporarily as medical officer during the absence on leave of the actual holder of the office, was dismissed by the Government before the leave had expired. It was held that he had no cause of action against the Government. In the recent case of *Dunn* v. *The Queen* (1896), 1 Q. B. 116, it was held that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. In this case a petition of right had been presented, and the case set up by the suppliant was that Sir Claude McDonald, Her Majesty's Commissioner and Consul-General for the Niger Protectorate in Africa, acting on behalf of the Crown, had engaged him in the service of the Crown as consular agent in that region for a period of three years certain, and he claimed damages for having been dismissed before the expiration of that period. It appeared that Sir Claude McDonald himself held office only during the pleasure of the Crown. Mr. Justice Day held that contracts for the service of the Crown were determinable at the pleasure of the Crown, and therefore directed a verdict and judgement for the Crown. The decision was upheld by the Court of Appeal. Subsequently Mr. Dunn brought an action against Sir Claude McDonald, presumably for breach of contract, but the action was dismissed, and the doctrine that an agent who makes a contract on behalf of his principal is liable to the other contracting party for a breach of an implied warrant of his authority to enter into the contract was held inapplicable to a contract made by a public servant acting on behalf of the Crown. *Dunn* v. *McDonald* (1897), 1 Q. B. 401, 555.

It is the practice for the Secretary of State in Council to make a formal contract with persons appointed in England to various

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branches of the Government service in India, e.g. education officers, forest officers, men in the Geological Survey, and mechanics and artificers on railways and other works, and many of these contracts contain an agreement to keep the men in the service for a term certain, subject to a right of dismissal for particular causes. Whether and how far the principles laid down in the cases of *Shenton* v. *Smith* and *Dunn* v. *The Queen* apply to these contracts, is a question which in the present state of the authorities cannot be considered free from doubt.

Tenure during pleasure is the ordinary tenure of public servants in England, including those who belong to the 'permanent civil service,' and the service of a member of the Civil Service of India is expressly declared by his covenant to continue during the pleasure of Her Majesty. Tenure during good behaviour is, subject to a few exceptions (e.g. the auditor of Indian accounts: see below, s. 30), confined to persons holding judicial offices. But judges of the Indian high courts are expressly declared by statute to hold during pleasure: see below, s. 97. The difference between the two forms of tenure is that a person holding during good behaviour cannot be removed from his office except for such misconduct as would, in the opinion of a court of justice, justify his removal; whilst a person holding during pleasure can be removed without any reason for his removal being assigned. See Anson, Law and Custom of the Constitution (second edition), pt. ii. p. 213. See also *Willis* v. *Gipps*, 6 State Trials N.S. 311 (1846), as to removal of judicial officers.

PART II.

REVENUES OF INDIA.

Application of revenues. [16 & 17 Vict. c. 95, s. 27. 21 & 22 Vict. c. 106, ss. 2, 42.]

22.—(1) The revenues of India are received for and in the name of Her Majesty, and may, subject to the provisions embodied in this Digest (*a*), be applied for the purposes of the government of British India alone.

(2) There are to be charged on the revenues of India alone—

(*a*) all the debts of the East India Company; and

21 & 22 Vict. c. 106.

(*b*) all sums of money, costs, charges, and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants, or liabilities existing at the commencement of that Act; and

(*c*) all expenses, debts, and liabilities lawfully contracted and incurred on account of the Government of India; and

(*d*) all payments under the Government of India Act, 1858.

(3) For the purposes of this Digest the revenues of India include—

(*a*) all the territorial and other revenues of or arising in British India; and

(*b*) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and

(*c*) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property (*b*) in British India; and

(*d*) all movable or immovable property (*b*) in British India escheating or lapsing for want of an heir or successor (*c*), and all property in British India devolving as *bona vacantia* for want of a rightful owner.

(4) All other money vested in, or arising or accruing from property or rights vested in, Her Majesty and the Government of India Act, 1858, or to be received or disposed of by the Secretary of State in Council under that Act, must be applied in aid of the revenues of India.

(*a*) The qualification refers to s. 34, under which there is power to dispose of escheated property.

(*b*) The expression in the Act is 'real or personal estate,' but 'movable or immovable property' is more intelligible in India, where the terms are defined by the General Clauses Act (X of 1897, s. 3 (25), (34)).

(*c*) As to the circumstances under which property in India may escheat or lapse to the Crown, see *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*, 8 Moore Ind. App. 500; and *Ranee Sonet Kowar* v. *Mirza Humut Bahadoor*, L. R. 3 I. A. 92.

Control of Secretary of State over ex-

23. The expenditure of the revenues of India, both in India and elsewhere, is subject to the control of the Secretary of State in Council, and no grant or appropriation of any part

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Expenditure of revenues. 21 & 22 Viet. c. 106, s. 41.]

of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, may be made without the concurrence of a majority of votes at a meeting of the Council of India.

This section of the Act of 1858 has given rise to questions as to the relations between the Secretary of State and his council, and between the Secretary of State in Council and the Government of India.

On the first question there was an important debate in the House of Lords on April 29, 1869 (Hansard, 195, pp. 1821–1846), in which the Marquis of Salisbury and the Duke of Argyll took part, and which was made remarkable by a difference of opinion between high legal authorities on the construction of this section, one view, the stricter, being maintained by Lord Cairns and Lord Chelmsford, and a different view by the then Lord Chancellor, Lord Hatherley. The discussion showed that whilst the object, and to some extent the effect, of this section was to impose a constitutional restraint on the powers of the Secretary of State with respect to the expenditure of money, yet this restraint could not be effectively asserted in all cases, especially where Imperial questions were involved. For instance, the power to make war necessarily involves expenditure of revenues, but is a power for the exercise of which the concurrence of a majority of votes at a meeting of the council cannot be made a necessary condition. The Secretary of State is a member of the Cabinet, and in Cabinet questions the decision of the Cabinet must prevail.

As to the second point, questions have been raised as to the powers of the Indian Legislature to appropriate by Indian Acts to specific objects, provincial or Imperial, sources of income, such as ferry fees and other tolls, process fees, rates on land, licence taxes, and income taxes. But a strict view of the enactment in the Act of 1858 would be inconsistent with the general course of Indian legislation, and would give rise to inconveniences in practice.

Restriction on application of revenues to military operations beyond the frontier. [21 & 22 Viet. c. 106, s. 55.]

24. Except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by Her Majesty's forces charged upon those revenues.

As to the object and effect of this enactment, and in particular as to whether it requires the consent of Parliament to be

obtained before war is commenced, see Hansard, 151, July 19, 23, 1858 (Debates on passing of Government of India Act); Hansard, 240, May 20, 21, 23, 1878 (Employment of Indian Troops in Malta); Hansard, 243, December 16, 17, 1878 (Afghan War); Hansard, 272, 273, July 27, 31, 1882 (Egypt); Hansard, 295, March 5, 9, 16, 1885 (Soudan); Hansard, 302, pp. 322-347, January 25, 1886 (Annexation of Upper Burma), July 6, 1896 (Soudan); Correspondence as to incidence of cost of Indian troops when employed out of India, 1896 (C. 8131); Anson, Law and Custom of the Constitution, Part ii. p. 361 (second edition).

Accounts of Secretary of State with Bank. [21 & 22 Vict. c. 106, ss. 43, 45. 22 & 23 Vict. c. 41, s. 3. 26 & 27 Vict. c. 73, s. 16.]

25.—(1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in Her Majesty for the purposes of the government of India, or from the sale or disposal thereof, must be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act, 1858.

(2) All such revenues and money must be paid into the Bank of England to the credit of an account entitled 'The Account of the Secretary of State in Council of India.'

(3) The money placed to the credit of this account is paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, or signed by the accountant-general on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned effectually discharges the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may for the payment of current demands keep at the Bank of England such accounts as he deems expedient, and every such account is to be kept in such name and be drawn upon by such person and in such manner as the Secretary of State in Council directs.

(5) There are raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested

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in the Secretary of State in Council, and any such account is entitled 'The Stock Account of the Secretary of State in Council of India.'

(6) Every account referred to in this section is a public account (a).

(a) This section represents the provisions of the Government of India Act, 1858, as modified by 22 & 23 Vict. c. 41, s. 3, and 26 & 27 Vict. c. 73, s. 16, and by existing practice.

Powers of attorney for sale or purchase of stock and receipt of dividends. [21 & 22 Vict. c. 106, s. 47. 26 & 27 Vict. c. 73, s. 16.]

26. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, may authorize all or any of the cashiers of the Bank of England—

(a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and

(b) to purchase and accept stock on any such account; and

(c) to receive dividends on any stock standing to any such account; and by any writing signed by two members of the Council of India and countersigned as aforesaid may direct the application of the money to be received in respect of any such sale or dividend.

Provided that stock may not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

Provision as to securities. [21 & 22 Vict. c. 106, s. 48. 26 & 27 Vict. c. 73, s. 16.]

27. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorized by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, and directed to the chief cashier and chief accountant of the Bank of England.

Exercise of borrowing powers. [21 & 22 Vict. c. 106, s. 49. 26 & 27 Vict. c. 73, s. 16. 56 & 57 Vict. c. 70, s. 5.]

28.—(1) All powers of issuing securities for money in the United Kingdom which are for the time being vested in the Secretary of State in Council must be exercised by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(2) Such securities, other than debentures and bills, as might have been issued under the seal of the East India Company must be issued under the hands of two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary.

(3) All debentures and bills issued by the Secretary of State in Council must bear the name of one of the under secretaries for India for the time being, and that name may be impressed or affixed by machinery or otherwise in such manner as the Secretary of State in Council directs.

Accounts to be annually laid before Parliament. [21 & 22 Vict. c. 106, s. 53.]

29.—(1) (*a*) The Secretary of State in Council must, within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(*a*) An account for the financial year preceding that last completed of the annual produce of the revenues of British India, distinguishing the same under the respective heads thereof, at each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof:

(*b*) The latest estimate of the same for the last financial year:

(*c*) The amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of that interest:

(*d*) An account of the state of the effects and credits in each province, and in England or elsewhere, applicable to the purposes of the Government of India, according to the latest advices which have been received thereof:

(*e*) A list of the establishment of the Secretary of State in

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Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment (*b*), the particulars thereof must be specially stated and explained at the foot of the account for that year.

(3) The account must be accompanied by a statement prepared from a detailed report from each province in British India in such form as best exhibits the moral and material progress and condition of British India in each such province (*c*).

(*a*) At some time or other during the session of Parliament, usually a few days before the end, the House of Commons goes into committee on the East India Revenue Accounts, and the Secretary of State for India or his representative in the House of Commons makes a statement in explanation of the accounts of the Government of India. The debate which takes place on this statement is commonly described as the Indian Budget Debate. For examples, see the debates of Aug. 13, 1896, and Aug. 5, 1897.

(*b*) The words 'in respect of the said establishment' represent the construction placed in practice on the enactment reproduced by this section.

(*c*) This is the annual 'moral and material progress report.' A special report is published at the expiration of each period of ten years, giving a very full and interesting account of the general condition of India at that date. The last of these decennial reports was in 1894.

Audit of Indian accounts in United Kingdom. 1 & 22 Vict. c. 106, s. 52. 44 & 45 Vict. c. 63, s. 1.]

30.—(1) (*a*) Her Majesty may, by warrant under Her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorize that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor examines and audits the accounts of the receipt, expenditure, and disposal in the United Kingdom of all money, stores, and property applicable for the purposes of the Government of India Act, 1858.

(3) The Secretary of State in Council must by the officers and servants of his establishment produce and lay before the

auditor all such accounts, accompanied by proper vouchers for their support, and must submit to his inspection all books, papers, and writings having relation thereto.

(4) The auditor has power to examine all such officers and servants in the United Kingdom as he thinks fit in relation to such accounts, and the receipt, expenditure, or disposal of such money, stores, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servant.

(5) The auditor must report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto as he thinks fit, specially noting any case, if such there be, in which it appears to him that any money arising out of the revenues of India has been appropriated to other purposes than those to which they are applicable.

(6) The auditor must specify in detail in his reports all sums of money, stores, and property which ought to be accounted for, and are not brought into account or have not been appropriated, in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and must also specify any defects, inaccuracies, or irregularities which may appear in the accounts, or in the authorities, vouchers, or documents having relation thereto.

(7) The auditor must lay all such reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor holds office during good behaviour.

(9) There are paid to the auditor and his assistants, out of the revenues of India, such salaries as Her Majesty by warrant, signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants are, for the purposes of superannuation allowance, in the same position as if they were on the establishment of the Secretary of State in Council.

(*a*) The duties of the India Office auditor as to Indian revenues and expenditure correspond in some respects to the

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PART III.

PROPERTY, CONTRACTS, AND LIABILITIES.

Power of Secretary of State to sell, mortgage, and buy property. [21 & 22 Vict. c. 106, s. 40.]

31.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any property for the time being vested in Her Majesty for the purposes of the government of India, and raise money on any such property by way of mortgage and make the proper assurances for any of those purposes, and purchase and acquire any property.

(2) All property acquired in pursuance of this section vests in Her Majesty for the service of the Government of India.

(3) Any assurance relating to real estate made by the authority of the Secretary of State in Council may be made under the hands and seals of three members of the Council of India.

Contracts of Secretary of State. [21 & 22 Vict. c. 106, s. 40. 22 & 23 Vict. c. 41, s. 5.]

32.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of the Government of India Act, 1858.

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made, if it is a contract which, if made between private persons, would be by law required to be under seal, may be made, varied, or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied, or

discharged under the hands of two members of the Council of India.

(5) The benefit and liability of every contract made in pursuance of this section passes to the Secretary of State in Council for the time being.

Power to execute assurances, &c. in India. [22 & 23 Vict. c. 41, ss. 1, 2. 33 & 34 Vict. c. 59, s. 2

33.—(1) The Governor-General in Council and any local Government (*a*) may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any movable or immovable property (*b*) whatsoever in India, within the limits of their respective governments, for the time being vested in Her Majesty for the purposes of the Government of India, or raise money on any such property by way of mortgage, and make proper assurances for any of those purposes and purchase or acquire any property, movable or immovable (*b*), in India within the said respective limits, and make any contract for the purposes of the Government of India Act, 1858 (*c*).

(2) Every assurance and contract made for the purposes of this section must be executed in such manner as the Governor-General in Council by resolution (*d*) directs or authorizes, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) Neither the Secretary of State nor any member of the Council of India, nor any person executing any such assurance or contract, is personally liable in respect thereof, but all liabilities in respect of any such assurance or contract are borne by the revenues of India.

(4) All property acquired in pursuance of this section vests in Her Majesty for the service of the Government of India.

(*a*) The words 'or any officer for the time being entrusted with the government, charge, or care of any presidency, province, or district' have been construed in practice as including only lieutenant-governors and chief commissioners, and not 'district officers' in the special Indian sense. They are, therefore,

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represented in the Digest by the expression 'local Government,' as defined by s. 124 of the Digest.

(*b*) The words in the Act are 'real or personal estate.'

(*c*) Soon after the passing of the Government of India Act, 1858, it became necessary to legislate for the purpose of determining how contracts on behalf of the Secretary of State in Council were to be made in India. Before that Act it had been held that contracts made in England by the East India Company as a governing power could only be made under seal (*Gibson* v. *East India Company*, 5 Bing. N. C. 262). In India, at least in the presidency towns, certain documents required sealing for the purpose of legal validity. The real seal of the Company was in England, but copies were kept in Calcutta, Madras, and Bombay, and documents sealed with these copies were generally accepted as sealed by the Company. Contracts not under seal were made in India on behalf of the Company by various officials. The transfer of the powers of the Company to the Secretary of State in Council disturbed all these arrangements, and the Government of India Act, 1859 (22 & 23 Vict. c. 41), was accordingly passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India. The Act was amended by the East India Contracts Act, 1870 (33 & 34 Vict. c. 59).

(*d*) See the resolution of the Government of India in the Home Department of March 28, 1895, specifying the officers by whom particular classes of instruments may be executed.

Power to dispose of escheated property, &c. [16 & 17 Vict. c. 15, s. 27.]

34. The Governor-General in Council, and any other person authorized by any Act passed in that behalf by the Governor-General in Council, may make any grant or disposition of any property in India accruing to Her Majesty by forfeiture, escheat, or otherwise, to or in favour of any relative or connexion of the person from whom the property has accrued, or to or in favour of any other person.

As to escheat, see note (*c*) on s. 22 above.

Rights and liabilities of Secretary of State in Council. [21 & 22 Vict. c. 106, ss. 65, 68. 22 & 23 Vict. c. 41, s. 6.]

35.—(1) The Secretary of State in Council may sue and be sued as well in India as in England by the name of the Secretary of State in Council, as a body corporate (*d*).

(2) Every person has the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, had not been passed (*b*).

(3) The property and effects for the time being vested in

Her Majesty for the purposes of the government of India, or acquired for those purposes, are liable to the same judgements and executions as they would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India is personally liable in respect of any contract entered into by him in his official capacity, nor in respect of any contract, covenant, or engagement of the East India Company, but all such liabilities, and all costs and damages in respect thereof, are borne by the revenues of India.

(*a*) Although the Secretary of State is a body corporate, or in the same position as a body corporate, for the purpose of contracts, and of suing and being sued, yet he is not a body corporate for the purpose of holding property. Such property as formerly vested, or would have vested, in the East India Company, now vests in the Crown. See the remarks of James, L. J., in *Kinlock* v. *Secretary of State in Council* (1880), L. R. 15 Ch. D. 1. The Secretary of State in Council has privileges in respect of debts due to him in India similar to those of the Crown in respect of Crown debts in England (*The Secretary of State for India* v. *Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23).

(*b*) An action does not lie against the Crown in England. The only legal remedy of a subject against the Crown in England is by petition of right.

Until 1874 it was doubtful whether a petition of right would lie except for restitution of property detained by the Crown. But in that year it was decided that a petition would lie for damages for breach of contract (*R.* v. *Thomas*, L. R. 10 Q.B. 31); and that decision has been followed in subsequent cases. A petition of right does not lie for a tort except where the wrong complained of is detention of property, the reason alleged being the maxim that the king can do no wrong. For a wrong done by a person in obedience or professed obedience to the Crown the remedy is against the wrongdoer himself and not against his official superior, because the ultimate superior, the Crown, is not liable. (See Clode, Law and Practice of Petition of Right, and *R.* v. *Lords Commissioners of the Treasury*, 7 Q.B. 387, the notes on that case in 1 Campbell's Ruling Cases, 802 sqq., and the recent case of *Raleigh* v. *Goschen*, [1898] 1 Ch. 73.

A petition of right does not lie in respect of property detained or a contract broken in India.

In the case of *Frith* v. *Reg.*, L. R. 7 Ex. 365 (1872), the suppliant, by petition of right, sought to recover from the Crown

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Under the enactments reproduced by this section there is a statutory remedy against the Secretary of State in Council, and that remedy is not confined to the classes of cases for which a petition of right would lie in England. See the judgement of Sir Barnes Peacock, C. J., in the case of the *P. & O. Company* v. *Secretary of State for India in Council* (1861), 2 Bourke 166; 5 Bom. H. C. R. Appendix A; and Mayne's Criminal Law of India, pp. 299 sqq. *Nobin Chunder Dey* v. *The Secretary of State for India*, I. L. R. 1 Cal. 11 (1875), was a suit for an alleged breach of contract. The cause of action was very vaguely stated, and the suit might apparently have been disposed of on the ground that no contract had been made out. But the Court held that, even assuming there was a contract, the suit was not maintainable, being in respect of acts done by the Government in exercise of sovereign powers, and that suits such as might before the passing of the Government of India Act, 1858, have been brought against the East India Company and subsequently against the Secretary of State in Council are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. It is, however, not quite easy to reconcile this judgement with the general current of Indian authorities on this question (see the remarks in Mayne's Crim. Law of India, p. 300).

But a suit or action against the Secretary of State in Council may sometimes be met by the plea that the act complained of falls within the category of 'acts of State,' and accordingly cannot be questioned by a municipal court. A plea of this kind was raised successfully in several cases by the East India Company with respect to proceedings taken by them, not in their character of trading company, but in their character of territorial sovereigns. (As to the distinction between these two characters, see *Gibson* v. *East India Company* (1839), 5 Bing. N. C. 262; and *Raja of Coorg* v. *East India Company* (1860), 29 Beav. 300, at p. 308, and below, p. 176.) And the principles laid down in these cases

have been followed in the case of similar proceedings against the Secretary of State in Council.

The first reported case in which the East India Company raised the defence that they were acting as sovereigns, and that the acts complained of were 'acts of State,' appears to have been *The Nabob of the Carnatic* v. *East India Company* (1793), 1 Ves. Jr. 371; 2 Ves. Jr. 56; 3 Bro. C. C. 292; 4 Bro. C. C. 100. This was a suit for an account brought by the Nabob of Arcot against the East India Company. On the hearing it appeared by the Company's answer that the subject-matter of the suit was a matter of political treaty between the Nabob and the Company, the Company having acted throughout the transaction in their political capacity, and having been dealt with by the Nabob as if they were an independent sovereign. On this ground the bill was dismissed.

The same principle was followed in the case of *The East India Company* v. *Syed Ally* (1827), 7 Moo. Ind. App. 555, where it was held that the resumption by the Madras Government of a 'jaghire' granted by former Nawabs of the Carnatic before the date of cession to the East India Company and the regrant by the Madras Government to another, was such an act of sovereign power as precluded the Court from taking cognizance of the question in a suit by the heirs of the original grantee.

The case of *Bedreechund* v. *Elphinstone* (1830), 2 State Trials, N. S. 379; 1 Knapp P. C. 316, raised the question as to the title to booty taken at Poonah, and alleged to be the property of the Peishwa. It was held that the transaction having been that of a hostile seizure made, if not *flagrante* yet *nondum cessante bello*, a municipal court had no jurisdiction to adjudge on the subject; and that if anything have been done amiss, recourse could be had only to the Government for redress.

In the Tanjore case, *Secretary of State in Council of India* v. *Kamachee Boye Sahaba* (1859), 13 Moo. P. C. 22, a bill was filed on the equity side of the Supreme Court of Madras to establish a claim as private property to certain property of which the Government had taken possession, and for an account. The acts in question had been done on behalf of the Government by a commissioner appointed by them in connexion with the taking over of Tanjore on the death of the Raja Sivaji without heirs. It was held that as the seizure was made by the British Government, acting as a sovereign Power, through its delegate, the East India Company, it was an act of State, to inquire into the propriety of which a municipal court had no jurisdiction. Lord Kingsdown, in delivering judgement, remarked that 'the general principle of law could not, with any colour of reason, be disputed. The transactions of independent States between each other are governed by other laws than those which municipal courts administer. Such courts have neither the means of deciding what is right nor the power of enforcing any decision which they make.' It was held that the act complained of fell within this principle. 'Of the propriety

CH. III. or justice of that act,' remarked Lord Kingsdown, 'neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy.'

In the Coorg case, *Raja of Coorg* v. *East India Company* (1860), 29 Beav. 300, the East India Company had made war against the Raja of Coorg, annexed his territory, and taken his property, including some of the Company's notes. The raja filed a bill against the East India Company, but it was held that the Company had acted in their sovereign capacity, and the bill was dismissed.

In the Delhi case, *Raja Salig Ram* v. *Secretary of State for India in Council* (1872), L. R. Ind. App. Supp. Vol., p. 119, the question was as to the validity of the seizure, after the Indian Mutiny, of estates formerly belonging to the titular King of Delhi. Here also it was held that the seizure was an act of State, and as such was not to be questioned in a municipal court.

In *Sirdar Bhagwan Singh* v. *Secretary of State for India in Council* (1874), L. R. 2 Ind. App. Cas. 38, an estate belonging to a former chief in the Punjab had been seized by the Crown, and the question was whether it had been so seized in right of conquest or by virtue of a legal title, such as lapse or escheat. It was held that the seizure had been made in right of conquest, and as such must be regarded as an act of State, and was not liable to be questioned in a municipal court.

Forester and others v. *Secretary of State for India in Council* (1872), L. R. Ind. App. Supp. Vol., p. 10, is a case on the other side of the line. In this case the Government of India had, on the death of Begum Sumroo, resumed property formerly belonging to her, and the legality of their action was questioned by her heirs. It appeared that the Begum had very nearly, but not quite, acquired the position of a petty Indian sovereign, but that she was a British subject at the time of her death, and that the seizure in question was not the seizure, by arbitrary power, of territories which up to that time belonged to another sovereign State, but was the resumption, under colour of a legal title of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure; and that consequently the questions raised by the suit were recognizable by a municipal court.

Doss v. *Secretary of State for India in Council* (1875), L. R. 19 Eq. 509, was a case arising out of the extinction of a sovereign power in India, though not in consequence of hostilities. It was a suit brought in the English Court of Chancery by creditors of the late King of Oudh against the Secretary of State as his

successor. It was held that as the debt had been incurred by the late king in his capacity as sovereign, and could not have been enforced against him as a legal claim, it did not, upon the annexation of the kingdom of Oudh, become a legal obligation upon the East India Company, and therefore was not, by the Act of 1858, transferred as a legal obligation against the Secretary of State; and on this ground a demurrer to the bill was allowed.

In the case of *Grant* v. *Secretary of State for India in Council*, (1877) 2 C. P. D. 445; 46 L. J. C., 681, a demurrer was allowed to an action by an officer of the East India Company's service who had been compulsorily retired under the order of the Government of India. Here the plaintiff was clearly a British subject, but nothing turned upon this. For the order was held, as an act of administration in the public service, to be within the high powers of government formerly entrusted to the East India Company (not as a trading company, but as a subordinate Government) and now to be exercised by the Government of India. In effect the question was not of a sovereign act, but of the powers of high (but still subordinate) officers of Government.

In *Kinlock* v. *Secretary of State for India*, L. R. 15 Ch. D. 1 and 7 App. Cas. 619, which was one of the Banda and Kirwee cases, it was held that a royal warrant granting booty of war to the Secretary of State for India in Council in trust to distribute amongst the persons found entitled to share it by the decree of the Court of Admiralty, did not operate as a transfer of property, or create a trust, and that the defendant, being merely the agent of the sovereign, was not liable to account to any of the parties found entitled.

In *Walker* v. *Baird*, [1892] App. Cas. 491, which was an appeal to the Privy Council from the Supreme Court of Newfoundland, it was held that the plea of 'act of State,' in the sense of an act, the justification of which on constitutional grounds cannot be inquired into, cannot be admitted between British subjects in a British colony. In this case the plaintiff complained of interference with his lobster factory, and the defendant, a captain of one of Her Majesty's ships, pleaded that he was acting in the execution of his duty, in carrying out an agreement between the Queen and the Republic of France. But the defence was not allowed.

On 'acts of State,' see further, Mayne, Criminal Law of India, pp. 318 sqq., the article 'Act of State' in the Encyclopaedia of the Laws of England, and the cases collected in the notes on *The Queen* v. *The Commissioners of the Treasury*, L. R. 7 Q. B. 387, in Campbell's Ruling Cases, vol. i. pp. 802 sqq. The notes on Indian cases in that volume have been partially reproduced above.

In suits or actions against the Secretary of State for breach of contract of service, regard must also be had to the principles regulating the tenure of servants under the Crown (see note on s. 21 above).

And, finally, the liability of the Secretary of State in Council to

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be sued does not deprive the Crown of the privileges to which it is entitled by virtue of the prerogative. In *Ganpat Pataya* v. *Collector of Canara*, (1875) 1 L. R. 1 Bom. 79, the priority of Crown debts over attachment was maintained, and West, J., said—'It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established, and applies not only to the statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England.'

As to the legal liability of a colonial governor, Sir W. Anson says—'He can be sued in the courts of the colony in the ordinary form of procedure. Whether the cause of action springs from liabilities incurred by him in his private or in his public capacity, this rule would appear to hold good. Though he represents the Crown he has none of the legal irresponsibility of the sovereign within the compass of his delegated and limited sovereignty.' Law and Custom of the Constitution, pt. ii. p. 262. See *Hill* v. *Bigge*, 3 Moore P. C. 465; *Musgrave* v. *Palido*, L. R. 5 App. Cas. 102.

The procedure in suits against the Government in India is regulated by ss. 416–429 of the Code of Civil Procedure (XIV of 1882).

PART IV.

THE GOVERNOR-GENERAL IN COUNCIL.

General Powers of Governor-General in Council.

General powers and duties of Governor-General in Council. [13 Geo. III, c. 63, s. 9. 3 & 4 Will. IV, c. 85, s. 39.]

36.—(1) The superintendence, direction, and control of the civil and military government of British India is vested in the Governor-General of India in Council (*a*).

(2) The Governor-General in Council is required to pay due obedience to all such orders as he may receive from the Secretary of State (*b*).

(*a*) It is difficult to reproduce with accuracy enactments which regulated the powers and duties of the Governor-General and his Council in the days of the East India Company.

Section 9 of the Regulating Act of 1773 (13 Geo. III, c. 63) enacts that 'the said governor-general and council' (i. e. the Governor-General and Council of Bengal), 'or the major part of them, shall have . . . power of superintending and controlling the presidencies of Madras, Bombay, and Bencoolen respectively, so far and in so much as that it shall not be lawful for any president and council of Madras, Bombay, or Bencoolen' to make

war or treaties without the previous consent of the governor-general and council, except in cases of imminent necessity or of special orders from the Company. See s. 49 of this Digest. Section 39 of the Charter Act of 1833 (3 & 4 Will. IV, c. 85) declared that 'The superintendence, direction, and control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a governor-general and councillors, to be styled "The Governor-General of India in Council."'

Since India has been placed under the direct government of the Crown the governor-general has also been viceroy, as the representative of the Queen. Lord Canning was the first viceroy.

The Governor-General in Council is often described as the Government of India, a description which is recognized by Indian legislation (X of 1897, s. 3 (22)).

Of course the reproduction of statutory enactments embodied in this Digest is not an exhaustive statement of the powers of the Governor-General in Council. For instance, the powers of the Government of India, as the paramount authority in India, extend beyond the limits of British India.

Again, the Governor-General in Council, as representing the Crown in India, enjoys, in addition to any statutory powers, such of the powers, prerogatives, privileges, and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law in force in India. Thus the Governor-General in Council has the prerogative of pardon, and it has been decided that the rule that the Crown is not bound by a statute unless expressly named therein applies also in India. See *Secretary of State for India* v. *Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23; *Ganpat Pataya* v. *Collector of Canara*, I. L. R. 1 Bom. 719; and *The Secretary of State for India* v. *Matthurabhai*, I. L. R. 14 Bom. 213, 218. The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory. See *Damodhar Khan* v. *Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332; *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1; and below, p. 452. Moreover, the Government of India has powers, rights, and privileges derived, not from the English Crown, but from the native princes of India, whose rule it has superseded. For instance, the rights of the Government in respect of land and minerals in India are different from the rights of the Crown in respect of land and minerals in England. As to the prerogatives of the Crown in India and elsewhere, see Chitty, Prerogatives of the Crown; Forsyth, Cases and Opinions, chap. v; and Campbell's Ruling Cases, vol. viii. pp. 150–275.

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), took away the military control and authority previously exercisable by the Governments of Madras and Bombay. As to the

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power of the governor-general to grant military commissions, see the note below, p. 271.

(*b*) This reproduces part of s. 9 of the Regulating Act, which directs that 'the said governor-general and council for the time being shall and they are hereby directed and required to obey all such orders as they shall receive from the Court of Directors of the said united Company.' This enactment was necessary at a time when the relations to be regulated were those between the statutory governor-general and his council on the one hand and the directors of the Company on the other, and, being still on the statute book, is reproduced here. But, of course, the relations between the Secretary of State and the Government of India are now regulated by constitutional usage.

The Governor-General.

The governor-general. [21 & 22 Vict. c. 106, s. 29.]

37. The Governor-General of India is appointed by Her Majesty by warrant under the Royal Sign Manual.

The form of the most recent warrant is printed below, p. 574. The governor-general usually holds office for a term of five years. As to his resignation, see below, s. 82.

The Council of the Governor-General.

Constitution of governor-general's council.

38. The council of the Governor-General of India, as constituted for executive purposes, consists of the ordinary members, and of the extraordinary member (*a*) (if any) thereof (*b*).

(*a*) See s. 40.

(*b*) This section does not reproduce any specific enactment, but represents the existing law.

Ordinary members of council. [21 & 22 Vict. c. 106, s. 7. 24 & 25 Vict. c. 67, s. 3. 32 & 33 Vict. c. 97, s. 8. 37 & 38 Vict. c. 91, s. 1.]

39.—(1) The ordinary members of the governor-general's council are appointed by Her Majesty by warrant under the Royal Sign Manual.

(2) The number of the ordinary members of the governor-general's council is five, or, if Her Majesty thinks fit to appoint a sixth member for public works purposes, six (*a*).

(3) Of the ordinary members of the governor-general's council, three must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India (*b*), and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing (*c*).

(4) If any person appointed an ordinary member of the governor-general's council is at the time of his appointment in the military service of the Crown, he may not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(*a*) The number is at present five. Power was given by 37 & 38 Vict. c. 91 to appoint a sixth member for public works purposes, but this power is at present in abeyance. Under existing arrangements the business of the Government of India is distributed between seven departments—Home, Foreign, Finance, Military, Public Works, Revenue and Agriculture, and Legislative. Of these the Foreign Department is under the immediate superintendence of the governor-general, and the same member of council takes charge of the Home Department and of the Department of Revenue and Agriculture. Each of the other departments is under the special charge of a single member of council.

The term of office of a member of council is by custom five years. As to his leave of absence and resignation, see below, ss. 81, 82.

(*b*) The result of this restriction is that if, as occasionally happens, the military member of council is not qualified by ten years' service in India, the finance member must, practically, be taken from the Indian Civil Service.

(*c*) The member of Council who is required to hold these qualifications is usually styled the law member. The first holder of the post was Lord Macaulay. He and his successors, down to 1853, were not members of the executive council, and his duties during this period are described by Sir Barnes Peacock in a minute of November 3, 1859 (below, p. 542), and by Sir H. S. Maine in his minute of May 5, 1866 (Minutes, No. 42). By the Act of 1853 (16 & 17 Vict. c. 95) he was placed in the same position as the other ordinary members of the governor-general's council. He is at the head of a department of his own, the Legislative Department, which was formerly a branch of the Home Department, but which was, in pursuance of Sir H. S. Maine's recommendations (see Minutes by Sir H. S. Maine, No. 84), constituted a separate department in 1869. The duties of this department, and its relation to the other branches of the Government of India, are regulated by the rules and orders for the transaction of business in the council of the governor-general. Practically, its functions are to prepare the drafts of all legislative measures introduced into the governor-general's council, to consider, and in some cases to settle, the form of regulations submitted under the Government of India Act, 1870 (33 Vict. c. 3), and of the rules and regulations made under powers given by Acts of the governor-general's council, to consider Bills and Acts of the local legislatures with reference to penal clauses and other special points, and to advise other departments of the Government on various legal questions.

CH. III. The law member of council takes charge of most of the Bills introduced into the governor-general's council, and is chairman of the select committees to which those Bills are referred. As to the general nature of his work, see the chapter on Legislation under Lord Mayo, contributed by Sir James FitzJames Stephen to Sir W. W. Hunter's Life of Lord Mayo (vol. ii. chap. viii). See also Sir H. S. Maine's Minute of 1868 on Over-legislation (Minutes, No. 204).

Extra-ordinary members of council. [24 & 25 Vict. c. 67, ss. 3, 9.]

40.—(1) The Secretary of State in Council may, if he thinks fit, appoint the commander-in-chief for the time being of Her Majesty's forces in India an extraordinary member of the governor-general's council, and in that case the commander-in-chief has rank and precedence in the council next after the governor-general (*a*).

(2) When and so long as the governor-general and his council are in any province administered by a governor in council, the governor of that province is an extraordinary member of the governor-general's council (*b*).

(*a*) In practice, the commander-in-chief is always appointed an extraordinary member of council.

(*b*) In practice, meetings of the governor-general and his council are not held within the presidencies of Madras and Bombay.

Ordinary and legislative meetings of governor-general's council.

41.—(1) The governor-general's council hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary and extraordinary members of the governor-general's council are entitled to be present at all meetings thereof.

This section does not reproduce any specific enactment, but represents existing law and practice.

There appears to be no express enactment that the governor-general shall, when present, preside at meetings of his council, but this is implied by such provisions as 24 & 25 Vict. c. 107, s. 7.

Ordinary meetings of council. [3 & 4 Will. IV, c. 85, s. 48.

42.—(1) The ordinary meetings of the governor-general's council are held at such places in India (*a*) as may be appointed by the Governor-General in Council.

(2) At any ordinary meeting of the governor-general's

council the governor-general and one ordinary member of his council may exercise all the functions of the Governor-General in Council (*b*). [24 & 25 Vict. c. 67, s. 9.]

(*a*) The expression used in the Act of 1861 is 'within the territories of India,' which, perhaps, means British India. In practice, the meetings of the council are held at Calcutta and Simla.

(*b*) The Act of 1793 (33 Geo. III, c. 52, s. 38) directs that 'the Governor-General and councillors of Fort William, and the several governors and councillors of Fort Saint George and Bombay, shall at their respective council boards proceed in the first place to the consideration of such matters as shall be proposed by the governor-general or by the governors of the said presidencies respectively, and as often as any matter or question shall be propounded by any of the said councillors it shall be competent to the said governor-general or governor respectively to postpone and adjourn the discussion thereof to a future day, provided that no such adjournment shall exceed forty-eight hours, nor shall the matter or question so proposed be adjourned more than twice without the consent of the councillor who proposed the same.'

This enactment, though not specifically repealed, is practically superseded by the rules and orders made under the Indian Councils Act, 1861, and therefore is not reproduced in the Digest.

Business of Governor-General in Council.

43.—(1) All orders and other proceedings of the Governor-General in Council must be expressed to be made by the Governor-General in Council, and must be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct (*a*). [33 Geo. III, c. 52, s. 39.]

(2) The governor-general may make rules and orders (*b*) for the more convenient transaction of business in his council, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders must be treated as being the order or the act of the Governor-General in Council. [53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c 67, s. 8.]

(*a*) Under the Act of 1793 (33 Geo. III, c. 52, s. 39) the signature referred to is that of 'the chief secretary to the council of the presidency.'

Under the Act of 1813 (53 Geo. III, c. 155, s. 79) orders or proceedings may be signed either by the chief secretary to the Government of the said presidency, or, in the absence of such chief secretary, by the principal secretary of the department of such presidency to which such orders or proceedings relate.

Under Act II of 1834 of the Indian Legislature, each of the

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secretaries to the Government of India and to the Government of Fort William in Bengal is declared to be competent to perform all the duties and exercise all the powers which by any Act of Parliament or any regulation then in force were assigned to the chief secretary to the Government of Fort William in Bengal, and each of the secretaries to the Governments of Fort St. George and Bombay is declared to be competent to perform all the duties and exercise all the powers which by any such Act or regulation were assigned to the chief secretaries to the Governments of Fort St. George and Bombay respectively.

Under these circumstances this section of the Digest probably represents the form in which Parliament would re-enact the existing statutory provisions, especially as they are provisions which may be modified by Indian Acts. See 24 & 25 Vict. c. 67, s. 22.

In practice, orders and proceedings are signed by the secretary of the department to which they relate.

(*b*) The rules and orders made under this section appear to be treated by the Government of India as confidential, and have not been published.

Procedure in case of difference of opinion. [13 Geo. III, c. 63, s. 8. 3 & 4 Will. IV, c. 85, s. 48.]

44.—(1) At any ordinary meeting of the governor-general's council, if any difference of opinion arises on any question brought before the council, the Governor-General in Council is bound by the opinion and decision of the majority of those present, and if they are equally divided the governor-general, or, in his absence, the senior member of the council present, has two votes or the casting vote.

[33 Geo. III, c. 52, ss. 47, 48, 49. 33 & 34 Vict. c. 3, s. 5.]

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity, or interests of British India, or of any part thereof, are or may be, in the judgement of the governor-general, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor-general may, on his own authority and responsibility, adopt, suspend, or reject the measure in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension, or rejection of the measure, and the fact of their dissent, be notified to the

Secretary of State, and the notification must be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section empowers the governor-general to do anything which he could not lawfully have done with the concurrence of his council.

The Regulating Act of 1773 (13 Geo. III, c. 63, s. 8) provides that 'in all cases whatever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said governor-general and council shall be bound and concluded by the opinion and decision of the major part of those present. And if it shall happen that, by the death or removal, or by the absence of any of the members of the said council, such governor-general and council shall be equally divided, then, and in every such case, the said governor-general, or, in his absence, the eldest councillor present, shall have a casting vote, and his opinion shall be decisive and conclusive.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, s. 48) enacts that 'in every case of difference of opinion at meetings of the said council where there shall be an equality of votes, the said governor-general shall have two votes or the casting vote.'

The difficulties which Warren Hastings encountered in his council under the Act of 1773 are well known, and Lord Cornwallis stipulated, on his appointment, that his hands should be strengthened; accordingly by an Act of 1786 (26 Geo. III, c. 10) the governor-general was empowered in special cases to override the majority of his council and act on his own responsibility. (See above, p. 69.)

The provisions of the Act of 1786 were re-enacted by ss. 47, 48, and 49 of the Charter Act of 1793 (33 Geo. III, c. 52), which are still in force, and which run as follows:—

'47. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal and the several governors of Fort Saint George and Bombay were vested with a discretionary power of acting without the concurrence of their respective councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting or forbearing to act: Be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the councils of Fort Saint George and Bombay, whereby the interests of the said united Company, or the safety or tranquillity

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'48. And . . . that the governor-general or governor who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other members of council shall alone be held responsible for the same and the consequences thereof.

'49. Provided always . . . that nothing in this Act contained shall extend or be construed to extend to give power to the said Governor-General of Fort William in Bengal, or to either of the said governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence

of the councils of the respective Governments or presidencies, anything herein contained to the contrary notwithstanding.'

The Government of India Act, 1870 (33 & 34 Vict. c. 3, s. 5), enacts that 'Whenever any measure shall be proposed before the Governor-General of India in Council, whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof, are or may be, in the judgement of the said governor-general, essentially affected, and he shall be of opinion either that the measure proposed might be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in council then present shall dissent from such opinion, the governor-general may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution; but in every such case two members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India; and such notification shall be accompanied by copies of the minutes (if any) which the members of the council shall have recorded on the subject.'

This enactment practically supersedes, but does not expressly repeal, the enactments in the Act of 1793, but does not apply to the Governments of Madras and Bombay. It was under the enactment of 1870 that Lord Lytton acted in March, 1879, when he exempted certain imported cotton goods from customs duty.

Provision for appointment of president of council. [24 & 25 Vict. c. 67, s. 6.]

45.—(1) Whenever the Governor-General in Council declares that it is expedient that the governor-general should visit any part of India, unaccompanied by his council, the Governor-General in Council may appoint some member of the council to be president of the governor-general's council during the time of the visit.

(2) The president of the governor-general's council has, during his term of office, the powers of the governor-general at ordinary meetings of the governor-general's council (*a*).

(*a*) The object of this section is to make provision for the current business of Government during the temporary absence of the governor-general. The last occasion on which it was put in force was Lord Dufferin's visit to Burma after the annexation of Upper Burma. In such cases the governor-general retains his own powers under s. 47 (1). This power is not exercised on the occasion of the viceroy's ordinary annual tour.

Provision for absence of

46. If the governor-general, or the president of the governor-general's council, is obliged to absent himself from

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any ordinary meeting of the governor-general's council by indisposition, or any other cause, and signifies his intended absence to the council, the senior ordinary (*a*) member for the time being present at the meeting presides thereat, with the like powers as the governor-general would have had, if present.

governor-general, or president, from meetings of council. [24 & 25 Vict. c. 67, s. 7.]

Provided that if the governor-general, or president, is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act requires his signature; but if he declines or refuses to sign it, the like provisions have effect as in cases where the governor-general, when present, dissents from a majority of the meeting of the council (*b*).

(*a*) The word 'ordinary' is not in the Act of 1861, but is probably implied.

(*b*) See s. 44.

Powers of governor-general in absence from Council. [33 Geo. III, c. 52, ss. 54, 55. 24 & 25 Vict. c. 67, s. 6.]

47.—(1) In any case where a president of the council may be appointed, the Governor-General in Council may by order authorize the governor-general alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at ordinary meetings (*a*).

(2) The governor-general during absence from his council may, if he thinks it necessary, issue, on his own responsibility, any order which might have been issued by the Governor-General in Council to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government, without previously communicating the order to the local Government, and any such order is of the same force as if made by the Governor-General in Council, but a copy of the order must be sent forthwith to the Secretary of State in Council and to the local Government, with the reasons for making the order.

(3) The Secretary of State in Council may by order suspend until further order all or any of the powers of the governor-general under the last foregoing sub-section, and those powers

will accordingly be suspended as from the time of the receipt by the governor-general of the order of the Secretary of State in Council (*b*).

(*a*) This provision supplements s. 45.

(*b*) The provisions of sub-sections (2) and (3) are reproduced from ss. 54 and 55 of the Act of 1793 (33 Geo. III, c. 52). But those sections were enacted under circumstances very different from those of the present time, and are practically superseded by the enactment reproduced in sub-section (1).

War and Treaties.

Restriction on power of Governor-General in Council to make war or treaty. [33 Geo. III, c. 52, s. 42.]

48.—(1) (*a*) The Governor-General in Council may not, without the express command of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government of India or against any prince or State dependent thereon, or against any prince or State whose territories Her Majesty has engaged by any subsisting treaty to defend or guarantee) either declare war or commence hostilities or enter into any treaty for making war against any prince or State in India, or enter into any treaty for guaranteeing the possessions of any such prince or State.

(2) In any such excepted case the Governor-General in Council may not declare war or commence hostilities or enter into a treaty for making war against any other prince or State than such as is actually committing hostilities or making preparations as aforesaid, and shall not make a treaty for guaranteeing the possessions of any prince or State except on the consideration of that prince or State actually engaging to assist Her Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he must forthwith communicate the same, with the reasons therefor, to the Secretary of State.

(*a*) This section first appeared in Pitt's Act of 1784 (24 Geo. III, sess. 2, c. 25, s. 34), and was preceded by the preamble:—'Whereas

CH. III. to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation.' (See above, p. 67.) It was re-enacted, with the preamble, by s. 42 of the Act of 1793, and, as so re-enacted, is still on the statute book. It is of historical interest as an expression of the views with which the expansion of the territorial possessions of the East India Company was regarded in the last century, but as it relates only to hostilities against and treaties with the 'country princes or States *in* India,' it is no longer of practical importance. The last provision, though expressed in general terms, obviously refers to the hostilities and treaties referred to in the preceding part.

PART V.

LOCAL GOVERNMENTS.

General.

Relation of local Governments to Governor-General in Council. [13 Geo. III, c. 63, s. 9. 33 Geo. III, c. 52, ss. 24, 40, 41, 43, 44. 3 & 4 Will. IV, c. 85, ss. 65, 67.]

49.—(1) Every local Government (*a*) must obey the orders of the Governor-General in Council, and keep him constantly and punctually informed of its proceedings, and is under his superintendence and authority in all matters relating to the administration of its province.

(2) No local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or State (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or from the Secretary of State, and every such treaty must, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General in Council.

(3) The authority of a local Government is not superseded by the presence in its province of the governor-general (*b*).

(*a*) The expression 'local Government' is defined by s. 124 to mean a governor in council, lieutenant-governor, or chief commissioner. By the Indian General Clauses Act (X of 1897) it is defined to mean the person authorized by law to administer

executive government in the part of British India in which the Act containing the expression operates, and to include a chief commissioner. As to the existing local Governments, see above, p. 117.

(*b*) This section reproduces enactments which applied to the Governments of Madras and Bombay, and were passed with the object of maintaining proper control by the Government of Bengal over the Governments of the two other presidencies. Of course the circumstances of the present day are widely different. Some of the provisions of the enactments reproduced are omitted, as having been made unnecessary by the existence of telegraphic communications, and by other alterations of circumstances. For instance, it has not been considered necessary to reproduce the power of the governor-general to suspend a local Government.

Governments of Madras and Bombay.

Governments of Madras and Bombay. [33 Geo. III, c. 52, s. 24. 3 & 4 Will. IV, c. 85, ss. 56, 57. 21 & 22 Vict. c. 106, s. 29.]

50.—(1) The provinces (*a*) of Fort St. George and Bombay are, subject to the provisions embodied in this Digest (*b*), administered by the Governors in Council of Madras and Bombay respectively, and are in this Digest referred to as the provinces of Madras and Bombay respectively.

(2) The governors of Madras and Bombay are appointed by Her Majesty by warrant under the Royal Sign Manual (*c*).

(3) The Secretary of State in Council may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the appointment of a council for either or both of those provinces, and whilst any such order is in force the governor of the province to which the order refers has all the powers of the Governor thereof in Council (*d*).

(*a*) It seems desirable to avoid the term 'presidency,' which dates from a time when British India was divided into three presidencies. But the Governments of Madras and Bombay occupy a position different from and superior to that of the other local Governments. The governor is appointed by the Crown, and not by the governor-general; he is assisted by an executive council, and he retains the right of communicating directly with the Secretary of State (above, s. 15).

(*b*) e. g. to the control of the governor-general.

(*c*) Before the Act of 1858 the appointments were made by the Court of Directors with the approval of the Crown.

(*d*) This power was given by the Act of 1833, but has never been exercised.

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Ordinary members of councils. [33 Geo. III, c. 52, ss. 24, 25. 3 & 4 Will. IV, c. 85, ss. 56, 57. 32 & 33 Vict. c. 97, s. 8.

51.—(1) The ordinary (*a*) members of the councils of the governors of Madras and Bombay are appointed by Her Majesty by warrant under the Royal Sign Manual.

(2) The number of the ordinary members of each of the said councils is such number not exceeding three as the Secretary of State directs (*b*).

(3) Every ordinary member of the said councils must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India (*c*).

[33 Geo. III, c. 52, s. 33.]

(4) Provided that if the commander-in-chief of Her Majesty's forces in India (not being likewise governor-general) happens to be resident at Madras or Bombay he is, during his continuance there, a member of the governor's council (*d*).

(*a*) The commanders-in-chief of the Madras and Bombay armies might be appointed, and, in fact, were always appointed, extra-ordinary members of the Madras and Bombay Councils. But these offices were abolished by the Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62). The term 'ordinary' is used in this section by way of distinction from additional or legislative members (see s. 60).

(*b*) The number was reduced from three to two in 1833, and is now two.

(*c*) The qualification under 33 Geo. III, c. 52, s. 25, is twelve years' residence in India in the service of the East India Company. The qualification for membership of the governor-general's council is somewhat different (s. 39).

(*d*) This proviso, which is taken from the Act of 1793, is practically inoperative.

Ordinary and legislative meetings of Madras and Bombay Councils.

52.—(1) The councils of the governors of Madras and Bombay hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary members of those councils are entitled to be present at all meetings thereof (*a*).

(*a*) This section does not reproduce any specific enactment, but represents the existing law.

Procedure in cases of difference

53. The foregoing provisions of this Digest with respect to the procedure in case of a difference of opinion between the

governor-general and his council, and in case of the governor-general being obliged to absent himself from his council by indisposition or other cause, apply, with the necessary modifications, in the case of a difference of opinion between the Governor of Madras or Bombay and his council, and in the case of either of those governors being obliged to absent himself from his council (*a*).

Of opinion. [33 Geo. III, c. 52, ss. 47, 48, 49.]

(*a*) See ss. 44 and 46. Section 44 reproduces 33 Geo. III, c. 52, ss. 47–49, as modified by 33 & 34 Vict. c. 3, s. 5. The last enactment applies only to the governor-general's council, but, as will be seen from the note to s. 44, does not substantially modify the Act of Geo. III.

54.—(1) All orders and other proceedings of the Governor of Madras in Council and of the Governor of Bombay in Council must be expressed to be made by the Governor in Council, and must be signed by a secretary to the Government of the province, or otherwise as the Governor in Council may direct (*a*).

Business of Governor in Council. [33 Geo. III, c. 52, s. 39. 53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c. 67, s. 28.]

(2) The governors of Madras and Bombay respectively may make rules and orders for the conduct of business in their respective councils, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders is deemed to be the order or the act of the Governor in Council.

(*a*) See note on s. 43.

Lieutenant-Governorships and other Provinces.

55.—(1) The provinces known as Bengal (*a*), the North-Western Provinces (*b*), the Punjab (*c*), and Burma (*c*) are administered by lieutenant-governors.

Lieutenant-governors. [5 & 6 Will. IV. c. 52, s. 2. 16 & 17 Vict. c. 95, s. 16. 17 & 18 Vict. c. 77, s. 4. 21 & 22 Vict. c. 106, s. 29.]

(2) Every lieutenant-governor of a province in India is appointed by the governor-general, subject to the approval of Her Majesty (*d*).

(3) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India (*e*).

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(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor (*f*).

(*a*) By s. 16 of the Government of India Act, 1853, the Court of Directors were authorized to declare that the Governor-General of India should not be Governor of the Presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency, and in that case a governor was to be appointed in like manner as the governors of Madras and Bombay, and the governor-general's power of appointing a deputy-governor of Bengal was to cease. But unless and until a separate governor of the presidency was so constituted, the Governor-General in Council might appoint any servant of the Company who had been ten years in its service in India to be lieutenant-governor of such part of the territories under the Presidency of Fort William in Bengal as, for the time being, might not be under the Lieutenant-Governor of the North-Western Provinces. The project of constituting a new governorship was abandoned, and under the alternative power a lieutenant-governor of the Lower Provinces of Bengal (now commonly known as Bengal) was appointed in 1854.

(*b*) The lieutenant-governorship of the North-Western Provinces is of earlier date than the lieutenant-governorship of Bengal, and was constituted under an Act of 1835 (5 & 6 Will. IV, c. 52). The Act of 1833 had directed the division of the Presidency of Bengal into two distinct presidencies, one to be styled the Presidency of Fort William, the other the Presidency of Agra. The Act of 1835 authorized the Court of Directors to suspend these provisions, and directed that during the period of suspension the Governor-General in Council might appoint any servant of the Company who had been ten years in its service in India 'to the office of Lieutenant-Governor of the North-Western Provinces now under the Presidency of Fort William in Bengal,' a designation then appropriate, but since made inappropriate by the annexation of the Punjab. Power was also given to declare and limit the extent of the territories so placed under a lieutenant-governor, and of the authority to be exercised by him. The arrangements thus temporarily made by the Act of 1835 were continued by the Act of 1853 (16 & 17 Vict. c. 95, s. 15). A lieutenant-governor of the North-Western Provinces was first appointed by notification, dated February 29, 1836 (Calcutta Gazette for March 2, 1836, second supplement). This notification merely gave the lieutenant-governor the powers of the Governor of Agra, and those powers, as defined by 3 & 4 Will. IV, c. 85, did not include any of the powers of the Governor-General in Council under the Bengal Regulations. The power given by the Act of 1835 to define the authority of the lieutenant-governor is probably superseded by the powers under 17 & 18 Vict. c. 77, s. 4.

The Lieutenant-Governor of the North-Western Provinces is also Chief Commissioner of Oudh.

(*c*) Section 17 of the Act of 1853 (16 & 17 Vict. c. 95) enacts that:—'It shall be lawful for the Court of Directors of the said Company, under such direction and control, if and when they think fit, to constitute one new presidency within the territories subject for the time being to the government of the said Company, and to declare and appoint what part of such territories shall be subject to the government of such new presidency; and unless and until such new presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such direction and control as aforesaid, if and when they think fit, to authorize (in addition to such appointments as are hereinbefore authorized to be continued and made for the territories now and heretofore under the said Presidency of Fort William) the appointment by the said Governor-General in Council of a lieutenant-governor for any part of the territories for the time being subject to the government of the said Company, and to declare for what part of the said territories such lieutenant-governor shall be appointed, and the extent of his authority, and from time to time to revoke or alter any such declaration.'

The power of constituting a new presidency was not exercised, but that of appointing a new lieutenant-governor was exercised in 1859 by the appointment of Sir John Lawrence as Lieutenant-Governor of the Punjab. The rule of construction applied to recent Acts of Parliament by s. 32 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), does not apply to the Act of 1853, and, apart from this, the power of appointing fresh lieutenant-governors under the Act of 1853 was probably exhausted by the constitution of a lieutenant-governorship of the Punjab. Further powers of constituting lieutenant-governorships are given by s. 46 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), but apparently are exercisable only when a new legislative council is established. See the note on s. 74 below. It was under these further powers that Burma was constituted a lieutenant-governorship in 1897.

(*d*) See 21 & 22 Vict. c. 106, s. 29.

(*e*) This provision applies in terms only to the lieutenant-governors of Bengal and the North-Western Provinces, but its operation has perhaps been extended by the final words of 21 & 22 Vict. c. 106, s. 29.

(*f*) This sub-section reproduces s. 4 of the Act of 1854 (17 & 18 Vict. c. 77), which, however, applies in terms only to the two older lieutenant-governorships, the language being: 'It shall be lawful for the said Governor-General of India in Council, with the like sanction and approbation [i.e. of the Court of Directors and the Board of Control], from time to time to declare and limit the extent of the authority of the Governor in Council, Governor, or Lieutenant-Governor of Bengal, or of Agra, or the North-Western Provinces, who is now, or may be hereafter, appointed.' But

CH. III. a power to alter the limits of provinces is given by other enactments. See s. 57 below.

Power to place territory under authority of Governor-General in Council. [17 & 18 Vict. c. 77, s. 3.]

56. The Governor-General in Council may, with the approval of the Secretary of State in Council, and by notification in the Gazette of India, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, or otherwise provide for the administration thereof.

There is reason to believe that the enactment reproduced by this section was passed in consequence of a minute of Sir Barnes Peacock, forming an enclosure to a dispatch from the Government of India, dated July 16, 1852, and that it was mainly designed to give the Governor-General in Council the power which, according to Sir Barnes Peacock, he had not, of taking under his immediate executive control territory which formed part of some one of the presidencies. The section has been thus applied in various cases. Thus Arakan, which was originally annexed to Lower Bengal, was under this section taken into the hands of the Governor-General in Council and annexed to British Burma (Foreign Department Notification, No. 30 (Political), dated January 16, 1862). The province of Assam was constituted by removing it under this section from the lieutenant-governorship of Bengal, taking it under the Governor-General in Council, and constituting it a chief commissionership, the regulation district of Sylhet being subsequently added to it in the same manner (Home Department Proclamation, No. 379, February 6, 1874; and Notification No. 380, of same date; also Notification No. 2344 of September 12, 1874).

On the other hand, when the chief commissionerships of Oudh, the Central Provinces, and British (now Lower) Burma were constituted out of territories vested in the Governor-General in Council, the procedure was merely the issue of a resolution reciting the reasons for establishing the chief commissionership, defining the territories included in it, and specifying the staff appointed, no reference being made to any statute (Foreign Department letter to Chief Commissioner of Oudh, No. 12, dated February 4, 1856, and Foreign Department Resolution, No. 9, dated November 2, 1861, and No. 212, dated January 31, 1862). In the same way repeated changes have been made by executive orders in the government of the Andaman Islands.

The view taken by the Government of India is that the section does not apply to territories already included in a chief commissionership, this description of territory being, according to the practice of the Indian Legislature, always treated as already under the immediate authority and management of the Governor-General

in Council, and therefore not capable of being placed under his authority and management by proclamation. A chief commissioner merely administers territory on behalf of the Governor-General in Council, and the Governor-General in Council does not divest himself of any of his powers in making over the local administration to a chief commissioner.

Although, however, the territory comprised in a chief commissionership may be technically under the immediate authority and management of the Governor-General in Council, yet the chief commissioner would ordinarily be the local Government within the meaning of Act X of 1897, s. 3 (29), and he is defined as a local Government by this Digest.

The result appears to be—

(1) The section must be used when it is desired to transfer the administration of territory from a governor in council or a lieutenant-governor to a chief commissioner;

(2) The section need not be used, and is not ordinarily used, when the administration of territory already under the administration of the Governor-General in Council is transferred from one local agency to another.

The transfer of territory under this section does not change the law in force in the territory (see below, s. 58). Consequently supplemental legislation will usually be necessary.

Power to alter limits of provinces. [3 & 4 Will. IV, c. 85, s. 38. 28 & 29 Vict. c. 17, ss. 4, 5.]

57. The Governor-General in Council may, by notification in the Gazette of India, declare, appoint, or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely—

(1) An entire district may not be transferred from one province to another without the previous approval of the Secretary of State in Council; and

(2) Any notification under this section may be disallowed by the Secretary of State (*a*).

(*a*) This section is intended to reproduce the effect of the following enactments:—

3 & 4 WILL. IV, c. 85, s. 38.

'It shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what part or parts of any of the territories under the government of the said Company shall from time to time

CH. III. be subject to the government of each of the several presidencies now subsisting or to be established as aforesaid, and from time to time, as occasion may require, to revoke and alter, in the whole or in part, such appointment, and such new distribution of the same, as shall be deemed expedient.'

28 & 29 VICT. c. 17, ss. 4, 5.

'It shall be lawful for the Governor-General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the presidencies and lieutenant-governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such presidencies and lieutenant-governorships as to the said Governor-General in Council may seem expedient.

'Provided always, that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any such proclamation. And provided further, that no such proclamation for the purpose of transferring an entire zillah or district from one presidency to another, or from one lieutenant-governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the governor-general.'

The power given by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 47), would appear from the context to be intended to be exercised for legislative purposes only, and is therefore reproduced below, s. 74. That given by the Act of 1865 (28 & 29 Vict. c. 17, s. 4) is wider. The Government of India were advised in 1878 that the Act of 1865 enables the Governor-General in Council to transfer territory from a chief commissionership to a presidency or lieutenant-governorship, but does not allow the converse. Parliament, it was thought, having enacted 17 & 18 Vict. c. 77, s. 3, must be taken to have been aware of the existence of territories called chief commissionerships, and to have deliberately omitted any mention of these in the Act of 1865.

On April 24, 1883, a proclamation was issued under 28 & 29 Vict. c. 17, s. 4, placing the villages of Shaikh-Othman and Imad, near Aden, under the Government of Bombay. The section has since then been applied to Perim.

Saving as to laws. [17 & 18 Vict. c. 77, s. 3.

58. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, does not affect the law for the time being in force in that part.

The power to take territory under the immediate authority of the Governor-General in Council (reproduced by s. 56 above) is qualified by the proviso that no law or regulation in force at any such time as regards any such portions of territory shall be altered or repealed except by law or regulation made by the Governor-General of India in Council (17 & 18 Vict. c. 77, s. 3). [24 & 25 Vict. c. 67, s. 47.]

The power to fix the limits of a province given by 24 & 25 Vict. c. 67, s. 47, and reproduced by s. 57 above, is qualified by a similar proviso, 'that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts have become annexed.'

The power exercisable under 28 & 29 Vict. c. 17, s. 4, is not qualified by a similar proviso.

Power to extend boundaries of presidency towns. [55 Geo. III, c. 84, s. 1.]

59. The Governor-General in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, extend the limits of the towns of Calcutta, Madras, and Bombay respectively; and any Act of Parliament, charter, law, or usage having effect only within the limits of those towns respectively will have effect within the limits as so extended.

This power, which was given by an Act of 1815, appears to be still in force, and not to be superseded by the later enactments reproduced above.

PART VI.

INDIAN LEGISLATION.

Legislation by Governor-General in Council.

Additional members of council for legislative purposes.

60.—(1) For the purposes of legislation, the governor-general nominates persons resident in India to be additional members of his council (*a*).

(2) The number of the additional members of the governor-general's council is such as to the governor-general from

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time to time seems expedient, but must be not less than ten and not greater than sixteen (*b*).

[24 & 25 Vict. c. 67, ss. 9, 10, 11. 33 & 34 Vict. c. 3, s. 3. 55 & 56 Vict. c. 14, s. 1.]

(3) At least one-half of the additional members of the governor-general's council must be persons not in the civil or military service of the Crown in India, and if any such additional member accepts office under the Crown in India his seat as an additional member thereupon becomes vacant.

(4) The term of office of an additional member of the governor-general's council is two years.

(5) When and so long as the governor-general and his council are in a province administered by a lieutenant-governor or chief commissioner, that lieutenant-governor or chief commissioner is an additional member of the council, in excess, if necessary, of the maximum number hereinbefore specified of additional members.

(6) The additional members of the governor-general's council are entitled to be present at the legislative meetings of the council, and at no others.

(7) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations as to the conditions under which nominations may be made in accordance with this section, and prescribe the manner in which such regulations are to be carried into effect (*c*).

(*a*) The Legislative Council of the Government of India is an expansion of the Governor-General's executive council. Its cumbrous statutory description is 'the Governor-General in Council at meetings for the purpose of making laws and regulations.' It was constituted by the Indian Councils Act, 1861, in supersession of the legislative body established under the Act of 1853, and its constitution was modified by the Indian Councils Act, 1892 (55 & 56 Vict. c. 14). The qualification of residence in India was added by the Act of 1892.

(*b*) The number under the Act of 1861 was not less than six nor more than twelve. It was increased by the Act of 1892.

(*c*) For these regulations, see below, p. 337 [1].

Times and places of legislative meetings.

61.—(1) The legislative meetings of the governor-general's council are held at such times and places as the Governor-General in Council appoints (*a*).

[1] The regulations for the Punjab and Burma have not yet been issued.

(2) Any such meeting may be adjourned by the governor-general, or by the person presiding at the meeting if so authorized by the governor-general (*b*). [24 & 25 Vict. c. 67, s. 17.]

(*a*) In practice the meetings are held at Calcutta and Simla. There are no legislative sessions, but meetings are held whenever it is considered convenient. A Bill remains in life until it is passed or withdrawn, or is treated under the rules of business as dropped. All the Acts passed in any one calendar year are numbered in consecutive order (Act I of 1897 and so on).

(*b*) It would be more convenient to make the power of adjournment exercisable by the person presiding, without further authority.

Constitution of legislative meetings of council. [24 & 25 Vict. c. 67, s. 15.]

62.—(1) At every legislative meeting of the governor-general's council the governor-general, or the president of the governor-general's council (*a*), or some other ordinary member of the governor-general's council, and at least six other members, ordinary or additional, of that council, must be present.

(2) At every such meeting the governor-general, or in his absence the president of the governor-general's council, or if there is no president, or if the president is absent, the senior ordinary member of the governor-general's council present at the meeting presides.

(3) The person presiding at a legislative meeting of the governor-general's council has a second or casting vote.

(*a*) See s. 45.

Legislative power of Governor-General in Council. [3 & 4 Will. IV, c. 85, ss. 46, 51, 73. 24 & 25 Vict. c. 67, s. 22. 28 & 29 Vict. c. 17, ss. 1, 2.]

63.—(1) The Governor-General in Council has power at legislative meetings to make laws (*a*)—

(*a*) for all persons, for all courts, and for all places and things within British India (*b*); and

(*b*) for all British subjects of Her Majesty and servants of the Government of India within other parts of India (*c*); and

(*c*) for all persons being native Indian subjects of Her Majesty or native Indian officers, soldiers, or followers in Her Majesty's Indian forces, when respectively in any part of the world, whether within or without Her Majesty's dominions (*d*); and

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(*d*) for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service (*e*); and

(*e*) for repealing or altering any laws or regulations for the time being in force in any part of British India [or over any persons for whom the Governor-General in Council has power to make laws] (*f*).

32 & 33 Vict. c. 98, s. 1. 33 & 34 Vict. c. 3, s. 2. 47 & 48 Vict. c. 38, ss. 2, 3, 5. 55 & 56 Vict. c. 14, s. 3.]

(2) Provided that the Governor-General in Council has not power to make any law repealing or affecting (*g*)—

3 & 4 Will. IV, c. 85. 16 & 17 Vict. c. 95. 17 & 18 Vict. c. 77. 21 & 22 Vict. c. 106. 22 & 23 Vict. c. 46. 24 & 25 Vict. c. 67.

(*a*) any provisions of the Government of India Act, 1833, except sections eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six of that Act, or any provisions of the Government of India Act, 1853, or the Government of India Act, 1854, or the Government of India Act, 1858, or the Government of India Act, 1859, or the Indian Councils Act, 1861 (*h*); or

(*b*) any Act of Parliament passed after the year one thousand eight hundred and sixty, and extending to British India (*i*); or

(*c*) any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India; or

(*d*) the Army Act (*j*), or any Act amending the same;

and has not power to make any law affecting the authority of Parliament (*k*), or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom (*l*), or the sovereignty or dominion of the Crown over any part of British India (*m*).

(3) The Governor-General in Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court within the meaning of this Digest (*n*), to sentence to the punishment of death any of Her Majesty's natural-born subjects born in Europe, or the children of such subjects, or

abolishing any high court within the meaning of this Digest (*o*).

(4) Any law made in accordance with this section controls and supersedes any other law or regulation repugnant thereto which may have been previously made by any authority in India (*p*).

(5) A law made in accordance with this section for Her Majesty's Indian Marine Service does not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East (*q*), and any territorial waters between those limits.

(6) The punishments imposed by any such law as last aforesaid for offences must be similar in character to, and not in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years or transportation for life or any less term may be substituted for penal servitude.

(*a*) The legislative powers of the Governor-General in Council are derived from a series of enactments.

Under s. 73 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), 'it is lawful for the said Governor-General in Council from time to time to make articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers, and such articles of war from time to time to repeal or vary and amend; and such articles of war shall be made and taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-General in Council under this Act, and shall prevail and be in force, and shall be of exclusive authority over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong, or wheresoever they may be serving: Provided nevertheless, that until such articles of war shall be made by the said Governor-General in Council, any

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articles of war for or relating to the government of the Company's native forces, which at the time of this Act coming into operation shall be in force and use in any part or parts of the said territories, shall remain in force.'

Under s. 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), the Governor-General in Council has power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions therein contained, 'to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede all laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the governors of the presidencies of Fort Saint George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations, under and by virtue of this Act: Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

'Or any of the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and of the Government of India Act, 1854, which after the passing of this Act shall remain in force:

'Or any provisions of the Government of India Act, 1858, or of the Government of India Act, 1859:

'Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

'Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian forces respectively; but subject to the provision contained in the Government of India Act, 1833, s. 73, respecting the Indian articles of war:

'Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, or anywise affecting Her Majesty's Indian territories, or the inhabitants thereof:

'Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.'

Under s. 1 of the Government of India Act, 1865 (28 & 29 Vict. c. 15), the Governor-General of India has power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise.

Under s. 1 of the Indian Councils Act, 1869 (32 & 33 Vict. c. 98), the Governor-General of India in Council has power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons being native Indian subjects of Her Majesty without and beyond as well as within the Indian territories under the dominions of Her Majesty. And under s. 3 of the same Act a law or regulation so made is not to be invalid by reason only of its repealing or affecting ss. 81, 82, 83, 84, 85, or 86 of the Government of India Act, 1833.

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), gives power to make laws for the Indian Marine Service.

Section 45 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), enacts that all laws and regulations made under that Act, so long as they remain unrepealed, shall be of the same force and effect within and throughout the Indian territories as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all courts of justice whatsoever within the same territories in the same manner as any public Act of Parliament would or ought to be taken notice of, and it shall not be necessary to register or publish in any court of justice any laws or regulations made by the said Governor-General in Council. This enactment has not been repealed, but the first part of it applies in terms only to laws made under the powers given by the Act of 1833, and is not reproduced in the Act of 1861, or expressly made applicable to laws made under the powers given by that Act. Its repetition or application was probably considered unnecessary in 1861. The exemption from the obligation to register, which is in general terms, was enacted with reference to the questions which had arisen as to the necessity for registering enactments made under various statutory powers conferred before 1833. (See above, pp. 62, 89.)

The powers of legislation reproduced in this Digest are not exhaustive. Under various Acts of Parliament the Indian Legislature, like other British legislatures with limited powers, has power to make laws on particular subjects with more extensive operation than laws made under its ordinary powers. See e.g. the Extradition Act, 1870 (33 & 34 Vict. c. 52, s. 18), the Slave Trade Act, 1876 (39 & 40 Vict. c. 46, s. 2), the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69, s. 32), the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Colonial Probates Act, 1892 (55 & 56 Vict. c. 6, s. 1), and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, ss. 264, 368, 735, 736.)

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The leading case on the general powers of the Indian Legislature is *The Queen* v. *Burah* (1878), L. R. 3 App. Cas. 889. The Indian Legislature had passed an Act (XXII of 1869) purporting:—First, to remove the Garo Hills from the jurisdiction of the ordinary civil and criminal courts, and from the law applicable to those courts, and, secondly, to vest the administration of civil and criminal justice in those territories in officers appointed by the Lieutenant-Governor of Bengal. The Act was to come into operation on a date to be fixed by the lieutenant-governor. By the ninth section the lieutenant-governor was empowered, by notification in the Calcutta Gazette, to extend all or any of the provisions of the Act to certain neighbouring mountainous districts. The validity of the Act, and particularly of the ninth section, was questioned, but was maintained by the Judicial Committee of the Privy Council, who held (1) that the Act was not inconsistent with the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), or with the Charter of the Calcutta High Court; (2) that it was in its general scope within the legislative powers of the Governor-General in Council; (3) that the ninth section was conditional legislation and not a delegation of legislative power, and (4) that where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial legislature, they may be well exercised, either absolutely or conditionally; in the latter case leaving to some external authority the time and manner of carrying its legislation into effect, and the area over which it is to extend.

Lord Selborne, in delivering the judgement of the Judicial Committee, expressed himself as follows:—

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to inquire further, or to enlarge constructively those conditions and restrictions.'

The same principles have been since laid down with respect to colonial legislatures in the case of *Powell* v. *Apollo Candle Com-*

pany, (1885) 10 App. Cas. 282. See also *Harris* v. *Davies*, (1885) 10 App. Cas. 279, and *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 274 (the Chinese immigration case).

In *Sprigg* v. *Siggan*, [1897] A. C. 238, it was held on appeal from the Cape that a power for the governor to add to the existing laws already proclaimed and in force in Pondoland such laws as he should from time to time by proclamation declare to be in force in those territories, did not authorize the issue of a proclamation for the arrest and imprisonment of a particular chief.

(*b*) The expression used in the Indian Councils Act, 1861, is 'the Indian territories *now* under the dominion of Her Majesty.' But s. 2 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), explains that this is to be read as if the words 'or hereafter' were inserted after 'now.' Consequently it is represented by British India, which means the territories for the time being constituting British India (see s. 124 and the notes thereon).

(*c*) The Act of 1861 gives power to make laws 'for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.' The Act of 1865 gives power to make laws 'for all British subjects of Her Majesty within the dominions of princes or States *in India* in alliance with Her Majesty, whether in the service of the Government of India or not.' Consequently it may be argued that the power to make laws for servants of the Government of India, as distinguished from British subjects generally, extends beyond the Native States of India. But, having regard to the sense in which the phrase 'princes and States in alliance with Her Majesty' is commonly used in Acts relating to India, it seems safer to adopt the narrower construction and to treat the expressions in the Act of 1861 and in the Act of 1865 as synonymous. See below, p. 445[1].

The expression 'Government of India' is defined by the Indian General Clauses Act (X of 1897), in terms which would exclude the local Governments. But this definition does not apply to the construction of an English Act of Parliament, and the expression 'servants of the Government of India' in the Act of 1861 would doubtless be held to include all servants of the Crown employed by or under the Government of India, whether directly employed by the Government of India in its narrower sense, or by or under a local Government, and whether British subjects or not. See the definition of 'Government' in Act X of 1897, s. 3 (21).

It has been argued that the expression 'British subjects of Her Majesty' was used in the Act of 1865 in its older and narrower sense, as not including persons of Asiatic descent. If so, there

[1] On general principles, there would seem to be no objection to legislation conferring jurisdiction in respect of an offence committed by a servant of the Crown in any foreign country, where the offence consists of *a breach of his duty to the Crown*.

CH. III. would be no power under this enactment to legislate for natives of Ceylon in the Nizam's territories. But this seems a narrow view. See below, pp. 445–448.

(*d*) The Indian Articles of War are contained in Act V of 1869, as amended by Act XII of 1894. The words 'or followers' do not occur in the Act of 1833, but their insertion seems to be justified by the Army Act, which, after a saving for Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India, enacts (s. 180 (2) (*b*)) that, 'For the purposes of this Act, the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers, wherever serving.'

(*e*) The East India Company used to keep a small naval force, known first as the Bombay Marine, and afterwards as the Indian Navy. This force was abolished in 1863, when it was decided that the Royal Navy should undertake the defence of India against serious attack by sea, and should also provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy. After the abolition of the Indian Navy, two small services, the Bengal Marine and the Bombay Marine, came into existence for local purposes, but were found to be expensive and inefficient, and accordingly the Government of India amalgamated them into the force now known as the Indian Marine. According to the preamble to the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), this force was 'employed under the direction of the Governor-General in Council for the transport of troops, the guarding of convict settlements, the suppression of piracy, the survey of coasts and harbours, the visiting of lighthouses, the relief of distressed or wrecked vessels, and other local objects,' and was maintained out of the revenues of India.

The ships on this establishment were Government ships, but did not form part of the Royal Navy, and consequently did not fall within the provisions either of the Merchant Shipping Acts on the one hand, or of the Naval Discipline Act (29 & 30 Vict. c. 109) on the other, or of any corresponding Indian enactments. They were in fact in the same kind of position as some of the vessels employed by the Board of Trade and by the Post Office in British waters. Under these circumstances it was thought expedient that the Governor-General in Council should have power to make laws for the maintenance of discipline in their service; and, accordingly, the Indian Marine Service Act, 1884, was passed for this purpose. It enabled the Governor-General in Council, at legislative meetings, to make laws for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service, but the punishments were to be of the same character as those

under the Navy Acts, and the Act was not to operate beyond the limits of Indian waters as defined by the Act, i. e. the old limits of the East India Company's charter. The reasons for the limitation to Indian waters were, doubtless, that it was desirable to maintain the local character of the objects for which, according to the preamble, the establishment was maintained; that if, under exceptional circumstances, a ship belonging to the establishment was sent to English waters, on transport service or otherwise, no practical difficulties in maintaining discipline were likely to arise; and that it was not desirable to give to these ships and to their officers, outside Indian waters, their proper sphere of operations, a status practically equivalent to that of the Royal Navy. The officers of the Indian Marine Service are appointed by the Governor-General in Council, but do not hold commissions from the Queen, and consequently cannot exercise powers of command over officers and men of the Royal Navy. The ships are unarmed, and therefore are practically of no use for the suppression of piracy. In time of war, however, the Queen may, by Proclamation or Order in Council, direct that any vessel belonging to the Indian Marine Service, and the men and officers serving therein, shall be under the command of the senior naval officer of the station where the vessel is, and while the vessel is under such command, it is to be deemed, to all intents, a vessel of war of the Royal Navy, and the men and officers are to be under the Naval Discipline Act, and subject to regulations issued by the Admiralty with the concurrence of the Secretary of State for India in Council (47 & 48 Vict. c. 38, s. 6).

Under the power conferred by the Indian Marine Service Act, 1884, the Indian Legislature passed the Indian Marine Act, 1887 (Act XIV of 1887), which establishes for the Indian Marine Service a code of discipline corresponding to that in force for the Royal Navy, and declares that Chapter VII of the Indian Penal Code, 'as to offences relating to the Army and Navy,' is to apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen (s. 79).

On the relations between the Royal Navy and the Indian Marine Service, see the evidence given by Sir John Hext and others in the First Report of the Royal Commission on the administration of the expenditure of India (1896).

(*f*) The words 'or over any persons for whom the Governor-General in Council has power to make laws' are not in the Act of 1861, but seem to be implied by the context.

(*g*) 'Affecting' would probably be construed as equivalent to 'altering.'

(*h*) The short titles given by the Short Titles Act, 1896, are substituted in the text for the longer titles used in the Act of 1861. It will be observed that, subject to the exceptions here specified, the Parliamentary enactments relating to India may be repealed or altered by Indian legislation. This power is saved by the language

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used in producing these enactments in the Digest. See e. g. ss. 101, 103, 105.

(*i*) The language of the Act of 1861 is: 'any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof.' See *R.* v. *Meares*, 14 Bengal Law Reports, 106, 112.

(*j*) 44 & 45 Vict. c. 58. Under s. 136 of this Act as amended by s. 4 of the Army (Amendment) Act, 1895 (58 & 59 Vict. c. 7), the pay of an officer or soldier of Her Majesty's regular forces must be paid without any deduction other than the deductions authorized by this or by any other Act, or by any Royal warrant for the time being, or by any law passed by the Governor-General of India in Council. Thus the Indian Legislature has power to authorize deductions from military pay, but this power can hardly be treated as power to amend the Army Act.

(*k*) After these words followed in the Act of 1861 the words 'or the constitution and rights of the East India Company.' It will be remembered that the Company was not formally dissolved until 1874.

(*l*) 'Whereon may depend . . . United Kingdom.' These words are somewhat indefinite, and a wide meaning was attributed to them by Mr. Justice Norman in the case of *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 456, 459. In this case, which turned on the validity of an arrest under Regulation III of 1818, the powers of the Indian Legislature under successive charters and enactments were fully discussed.

(*m*) Are the words 'or the sovereignty,' &c., to be connected with 'whereon may depend,' or with 'affecting'? Probably the latter. If so, legislation to authorize or confirm the cession of territory is placed by these words beyond the powers of the Indian Legislature. The power of the Crown to cede territory in India and elsewhere was fully discussed in the Bhaunagar case, *Damodhar Khan* v. *Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332, where the Judicial Committee, without expressly deciding the main question at issue, clearly intimated that in their opinion the Crown possessed the power. This opinion was followed by the high court at Allahabad in the case of *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1. See further, Sir H. S. Maine's Minute of 1868 on the Rampore Cession case (No. 79), and the debates in Parliament in 1890 on the cession of Heligoland, and the Anglo-German Agreement Act, 1890 (53 & 54 Vict. c. 32), by which the assent of Parliament was given to the agreement for that cession.

(*n*) i.e. a chartered high court. See s. 124.

(*o*) This reproduces 3 & 4 Will. IV, c. 85, s. 46, and is the reason why the sanction of the Secretary of State in Council is recited in the preamble to the Punjab Courts Act, 1884 (XVIII of 1884, printed in the Punjab Code).

(*p*) 'Any authority in India.' The words of the Act are: 'the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations by virtue of this Act.'

(*q*) These were the old limits of the East India Company's charter.

Business at legislative meetings. [24 & 25 Vict. c. 67, s. 19. 55 & 56 Vict. c. 14, s. 2.]

64.—(1) (*a*) At a legislative meeting of the governor-general's council no business shall be transacted other than the consideration of measures introduced [or proposed to be introduced] (*b*) into the Council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings.

(2) At a legislative meeting of the governor-general's council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced] (*b*) into the council for that purpose, [or having reference to some rule for the conduct of business] (*b*).

(3) It shall not be lawful, without the previous sanction of the governor-general, to introduce at any legislative meeting of the governor-general's council any measure affecting—

(*a*) The public debt or public revenues of India or imposing any charge on the revenues of India (*c*); or

(*b*) The religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(*c*) The discipline or maintenance of any part of Her Majesty's military or naval forces; or

(*d*) The relations of the Government with foreign princes or States.

(4) Provided that the Governor-General in Council may, with the sanction of the Secretary of State in Council, make rules authorizing at any legislative meeting of the governor-general's council a discussion of the annual financial

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statement of the Governor-General in Council and the asking of questions, but under such conditions and restrictions as to subject or otherwise as may be in the said rules prescribed and declared. No member at any such meeting of the council shall have power to submit or propose any resolution or to divide the council in respect of any such financial discussion or the answer to any question asked under the authority of this section or the rules made under this sub-section. Rules made under this sub-section shall not be subject to alteration or amendment at legislative meetings of the council (*d*).

(*a*) As to the object with which this section was framed, see par. 24 of Sir C. Wood's dispatch of August 9, 1861, below, p. 565.

(*b*) The words 'or proposed to be introduced' and 'or having reference to some rule for the conduct of business' are not in the Act of 1861, but represent the existing practice.

(*c*) The words 'or imposing any charge on the revenues of India' might perhaps be omitted as unnecessary.

(*d*) This proviso reproduces the alterations made by the Act of 1892. The rules are set out below, p. 348.

Assent of governor-general to Acts. [24 & 25 Vict. c. 67, s. 20.]

65.—(1) When an Act has been passed by the governor-general's council at a legislative meeting, the governor-general, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act, or that he reserves the Act for the signification of Her Majesty's pleasure thereon.

(2) An Act of the Governor-General in Council has not validity until the governor-general has declared his assent thereto, or, in the case of an Act reserved for the signification of Her Majesty's pleasure, until Her Majesty has signified her assent to the governor-general through the Secretary of State in Council, and that assent has been notified in the Gazette of India.

Power of Crown to disallow Acts. [24 & 25 Vict. c. 67, s. 21.]

66.—(1) When an Act of the Governor-General in Council has been assented to by the governor-general he must send to the Secretary of State an authentic copy thereof.

(2) It is lawful for Her Majesty to signify through the Secretary of State in Council her disallowance of any such Act.

(3) Where the disallowance of any such Act has been so signified, the governor-general must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly (*a*).

(*a*) When an Act has been passed by the Governor-General in Council the Secretary of State usually sends a dispatch intimating that the Act has been considered in council and will be left to its operation. But this formal expression of approval is not essential to the validity of the Act.

Rules for conduct of business. [24 & 25 Vict. c. 67, s. 18.]

67.—(1) The Governor-General in Council may at legislative meetings of the governor-general's council, subject to the assent of the governor-general, make rules for the conduct of business at legislative meetings of the council, and for prescribing the mode of promulgation and authentication of Acts made at such meetings; but any such rule may be disallowed by the Secretary of State in Council, and if so disallowed has no effect.

These rules are set out below, p. 327. As to the principles on which the original rules were framed, see par. 16 of Sir C. Wood's dispatch of August 9, 1861, below, p. 563.

Power to make regulations. [33 Vict. c. 3, ss. 1, 2.]

68.—(1) (*a*) The local Government (*b*) of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration, and when any such draft has been approved by the Governor-General in Council and assented to by the governor-general (*c*), it must be published in the Gazette of India and in the local official gazette, if any, and thereupon has the like force of law and is subject to the like disallowance as if it had been made by the Governor-General in Council at a legislative meeting.

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(3) The governor-general must send to the Secretary of State an authentic copy of every regulation to which he has assented under this section.

(4) The Secretary of State may by resolution in council apply this section to any part of British India as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied (*d*).

(*a*) This power was conferred by the Act of 1870, with the object of providing a more summary legislative procedure for the more backward parts of British India. The enactment conferring the power was passed in consequence of a dispatch from the Government of India drafted by Sir H. S. Maine. (See Minutes by Sir H. S. Maine, Nos. 67, 69.) The regulations made under it must be distinguished from the old Madras, Bengal, and Bombay regulations, which were made before 1833 by the Governments of the three presidencies, and some of which are still in force.

(*b*) 'Local Government' is defined by s. 124.

(*c*) It will be observed that the Governor-General in Council cannot amend the draft.

(*d*) The Indian Statute Book has from the earliest times contained 'deregulationizing' enactments, i. e. enactments barring, completely or partially, the application in the more backward and less civilized parts of the country of the ordinary law, which was at first contained in the old 'regulations.' These enactments took varied and sometimes very complicated forms, so that, in course of time, doubts arose, and it became occasionally a matter of considerable difficulty to ascertain what laws were and what were not in force in the different 'deregulationized' tracts. The main object of the Scheduled Districts Act, 1874 (XIV of 1874), was to provide a method of removing these doubts by means of notifications to be issued by the Executive Government. The preamble refers to the fact that 'various parts of British India had never been brought within, or had from time to time been removed from, the operation of the general Acts and regulations, and the jurisdiction of the ordinary Courts of Judicature'; that 'doubts had arisen in some cases as to which Acts or regulations were in force in such parts, and in other cases as to what were the boundaries of such parts'; and that 'it was expedient to provide readier means for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein.' The Act then proceeds to specify and constitute a number of deregulationized tracts as 'scheduled districts,' to give the power of declaring by notification what enactments are, or are not, actually in force in any scheduled district, and to provide for extending by notification to any 'scheduled district,' with or without modifications or restrictions, any enactment in

force in any part of British India at the date of the extension. The Act also gives powers to appoint officers for the administration of a scheduled district, and to regulate their procedure and the exercise of their powers therein, and also to settle questions as to the boundaries of any such tract. A large number of declaratory and extending notifications have been issued under the Act.

Every district to which 33 Vict. c. 3, s. 1 (reproduced by this section of the Digest), is made applicable thereupon becomes by virtue of s. 1 of the Indian Scheduled Districts Act, 1874 (XIV of 1874), a scheduled district within the meaning of that Act and of the Indian General Clauses Act, 1897 (X of 1897, s. 3 (49)).

The Scheduled Districts Act, 1874, is immediately followed in the Indian Statute Book by the Laws Local Extent Act, 1874 (XV of 1874), the object of which is to remove doubts as to the application of certain enactments to the whole or particular parts of British India. This Act also uses the expression 'scheduled district,' but in a sense which has in the course of time become different from that in which the term is used in the Scheduled Districts Act. The lists of scheduled districts appended to the two Acts were originally identical, but since 1874 eight Acts have been passed which have amended or partially repealed the list in Act XIV, but have not in all cases made corresponding alterations in the list annexed to Act XV. Moreover, certain regions not included in the original schedule have, by reason of the application to them of 33 Vict. c. 3, s. 1, become *ipso facto* scheduled districts. The Legislative Department of the Government of India has published lists of the 'territories which are "deregulationized," "scheduled," and subject to the statute 33 Vict. c. 3, s. 1, respectively.'

Power to make ordinances in cases of emergency. [24 & 25 Vict. c. 67, s. 23.]

69. The governor-general may in cases of emergency make and promulgate ordinances for the peace and good government of British India, or any part thereof, and any ordinance so made has, for such period not exceeding six months from its promulgation as may be declared in the notification, the like force of law to a law made by the Governor-General in Council at a legislative meeting; but the power of making ordinances under this section is subject to the like restrictions as the power of making laws at legislative meetings; and any ordinance made under this section is subject to the like disallowance as a law passed at a legislative meeting, and may be controlled or superseded by any such law.

The power given by this section should be called into action only on urgent occasions. It has only been exercised six times.

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The reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted without loss of time to Her Majesty's Government. Paragraph 26 of Sir C. Wood's dispatch, below, p. 566.

Local Legislatures.

Meaning of local legislatures. [See 55 & 56 Vict. c. 14, s. 6.]

70. The Governor of Madras in Council, the Governor of Bombay in Council, the Lieutenant-Governor of Bengal in Council, the Lieutenant-Governor of the North-Western Provinces and Oudh in Council, the Lieutenant-Governor of the Punjab in Council, the Lieutenant-Governor of Burma in Council, and any local legislature which may be hereafter constituted in pursuance of the Indian Councils Act, 1861, are local legislatures within the meaning of this Digest.

24 & 25 Vict. c. 67.

This section follows substantially the definition of 'local legislature' in the Indian Councils Act, 1892 (55 & 56 Vict. c. 14, s. 6).

Constitution of legislative council in Madras and Bombay. [24 & 25 Vict. c. 67, ss. 29, 30. 55 & 56 Vict. c. 14, ss. 1, 4.]

71.—(1) (*a*) The legislative powers of the Governor of Madras in Council and the Governor of Bombay in Council are exercised at legislative meetings of their respective councils.

(2) For the exercise of those powers the governors of Madras and Bombay respectively must nominate persons resident in India to be additional members of their councils.

(3) The number of the additional members of each of the said councils (besides the advocate-general of the province or officer acting in that capacity) is such as to the governors of Madras and Bombay respectively from time to time seems expedient, but must be not less than eight nor more than twenty (*b*).

(4) The advocate-general or acting advocate-general for the time being of the province must be appointed one of the additional members of the council of the governor of that province.

(5) Of the additional members of each of the said councils at least one-half (*c*) must be persons who are not in the civil or military service of the Crown in India, and if any

such additional member accepts office under the Crown in India, his seat as an additional member thereupon becomes vacant.

(6) The term of office of an additional member of either of the said councils [other than the advocate-general or acting advocate-general] (*d*) is two years.

(7) An additional member of either of the said councils is entitled to be present at legislative meetings of the council, and at no others.

(8) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations (*e*) as to the conditions under which nominations are to be made under this section, and prescribe the manner in which such regulations are to be carried into effect.

(*a*) This section reproduces the provisions of the Act of 1861, as modified by the Act of 1892.

(*b*) The number under the Act of 1861 was not less than four nor more than eight.

(*c*) 'One-half.' Does this include the advocate-general? The point does not seem clear.

(*d*) The words in square brackets probably express the effect of the existing law, but the construction is not clear.

(*e*) See these regulations below, pp. 339, 341.

Procedure at legislative meetings of councils of Madras and Bombay. [24 & 25 Vict. c. 67, ss. 34, 36.]

72.—(1) At every legislative meeting of the council of the Governor of Madras, or of the Governor of Bombay, the governor or some ordinary member of his council, and at least four other members of the council, must be present.

(2) The governor, if present, and in his absence the senior ordinary member (*a*) of his council, presides.

(3) In case of difference of opinion at any such legislative meeting, the opinion of the majority prevails.

(4) In case of an equality of votes, the governor, or in his absence the member presiding, has a second or casting vote.

(5) Any such legislative meeting must be held at such time and place as the governor appoints, and may be adjourned by the governor or by the person presiding at the meeting if so authorized by the governor.

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(*a*) The expression in the Act of 1861 is 'senior civil ordinary member,' and the word 'civil' was perhaps intended to exclude the local commander-in-chief, who, however, was an extraordinary member. If so, the word has become unnecessary since the passing of the Madras and Bombay Armies Act (56 & 57 Vict. c. 62).

Constitution of legislative councils of lieutenant-governors. [24 & 25 Vict. c. 67, ss. 45, 48. 55 & 56 Vict. c. 14, s. 1.]

73.—(1) The members of the councils of the Lieutenant-Governor of Bengal (*a*), of the Lieutenant-Governor of the North-Western Provinces and Oudh (*b*), of the Lieutenant-Governor of the Punjab (*b*), of the Lieutenant-Governor of Burma (*b*), and of any lieutenant-governor for whose province a local legislature is hereafter constituted, must be such persons resident in India as the lieutenant-governor, with the approval of the governor-general, nominates, subject to this qualification, that not less than one-third of the members of each council must be persons who are not in the civil or military service of the Crown in India.

(2) The number of the members of the council of the Lieutenant-Governor of Bengal, of the council of the Lieutenant-Governor of the North-Western Provinces and Oudh, of the council of the Lieutenant-Governor of the Punjab, and of the council of the Lieutenant-Governor of Burma, is such as the Governor-General in Council may from time to time fix by proclamation, but must not be more than twenty for Bengal and not more than fifteen for the North-Western Provinces and Oudh (*c*).

(3) The number of the members of any council of a lieutenant-governor which may be hereafter constituted for legislative purposes must be that fixed by the notification under which the council is constituted.

(4) The term of office of a member of a lieutenant-governor's council is two years.

(5) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations as to the conditions under which nominations are to be made under this section, and prescribe the manner in which such regulations are to be carried into effect (*d*).

(*a*) Section 44 of the Indian Councils Act, 1861, enacted that the Governor-General in Council, so soon as it should appear to him expedient, should, by proclamation, extend the provisions of the Act touching the making of laws and regulations for the peace and good government of the presidencies of Fort Saint George and Bombay to the Bengal division of the Presidency of Fort William, and should specify in such proclamation the period at which such provisions should have effect, and the number of councillors which the lieutenant-governor of the said division might nominate for his assistance in making laws and regulations. Accordingly a legislative council was established for Bengal by proclamation of January 18, 1862. Calcutta Gazette, 1862, pp. 227, 228.

(*b*) By s. 44 of the Indian Councils Act, 1861, the Governor-General in Council was also empowered to extend the provisions of the Act to the territories known as the North-Western Provinces and the Punjab respectively. A legislative council was established for the North-Western Provinces and Oudh together (see the powers under the next section), by proclamation of November 26, 1886. Legislative councils were established for the Punjab and Burma by proclamation of April 9, 1897. The number in each case was fixed at nine.

(*c*) By the Act of 1892 (55 & 56 Vict. c. 14, s. 1) the Governor-General in Council was empowered to increase by proclamation the number of legislative councillors for Bengal and for the North-Western Provinces and Oudh, subject to the maximum limit of twenty and fifteen. The number for Bengal was, by proclamation of March 16, 1893, fixed at twenty. The number for the North-Western Provinces and Oudh was, by proclamation of the same date, fixed at fifteen.

(*d*) This power was given by the Act of 1892. See the regulations below, pp. 343, 346. Those for the Punjab and Burma have not yet been issued.

Power to constitute new local legislatures. [24 & 25 Vict. c. 67, ss. 46–49.]

74.—(1) The Governor-General in Council may, with the previous approval of the Secretary of State in Council, and by notification in the Gazette of India, constitute a new province for legislative purposes, and, if necessary, appoint a lieutenant-governor for any such province, and constitute the Lieutenant-Governor in Council of the province, as from a date specified in the notification, a local legislature for that province, and fix the number of the lieutenant-governor's council, and define the limits of the province for which the Lieutenant-Governor in Council is to exercise legislative powers.

(2) Any law made by the local legislature of any province shall continue in force in any part of the province severed

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(*a*) This section is intended to give the effect of the existing enactments in the Act of 1861 (24 & 25 Vict. c. 67, ss. 46–49), which run as follows:—

'46. It shall be lawful for the governor-general, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and, further, to appoint from time to time a lieutenant-governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such lieutenant-governor, in like manner as is provided by the Government of India Act, 1854, respecting the lieutenant-governors of Bengal and the North-Western Provinces.

'47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory, for the said purposes. Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts may become annexed.

'48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory; and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such councils for that purpose, and respecting the power of the governor-general to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

'49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act, for the purpose of constituting any council for any presidency, division, provinces, or territories hereinbefore named, or any other provinces,

or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the governor-general.'

It was under these enactments that a local legislature was established in 1886 for the North-Western Provinces and Oudh as a single province for legislative purposes, and that in 1897 a local legislature was established for Burma.

The effect of the enactments appears to be that a new lieutenant-governorship cannot be created unless a local legislature is created at the same time, as was done in the case of Burma.

Procedure at meetings of lieutenant-governor's council. [24 & 25 Vict. c. 67, s. 45.]

75.—(1) At every meeting of a lieutenant-governor's council the lieutenant-governor, or in his absence the member of the council highest in official rank among those holding office under the Crown, presides.

(2) The legislative powers of the council may be exercised only at meetings at which the lieutenant-governor or some other member holding office under the Crown, and not less than one-half of the members of the council, are present.

(3) In case of difference of opinion at any meeting of the lieutenant-governor's council, if there is an equality of votes, the lieutenant-governor or other person presiding has a second or casting vote.

Powers of local legislature. [24 & 25 Vict. c. 67, ss. 42, 43, 48. 55 & 56 Vict. c. 14, s. 5.]

76.—(1) The local legislature of any province in India may, subject to the provisions of this Digest, make laws for the peace and good government of the territories for the time being constituting that province (*a*).

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or amend as to that province any law or regulation made by any authority in India other than that local legislature (*b*).

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in

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Council for the general purposes of the government of India; or

(*b*) regulating any of the current coin, or the issue of any bills, notes, or other paper currency; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province; or

(*d*) altering in any way the Indian Penal Code (*e*); or

(*e*) affecting the religion or religious rites or usages of any class of Her Majesty's subjects in India; or

(*f*) affecting the discipline or maintenance of any part of Her Majesty's naval or military forces; or

(*g*) regulating patents or copyright; or

(*h*) affecting the relations of the Government with foreign princes or States.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament for the time being in force in the province (*d*).

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of the provisions contained in this Digest, is not to be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this section.

(*a*) The Governor-General in Council has concurrent power to legislate for a province under a local legislature. In practice, however, this power is not, unless under very exceptional circumstances, exercised as to matters within the competency of the local legislature.

(*b*) Under the Act of 1861 a local legislature could not alter an Act of the Government of India passed after the Act of 1861 came into operation. Consequently the sphere of operations of the local legislatures was often inconveniently restricted by the numerous Acts passed by the Governor-General in Council since 1861, particularly by such general Acts as the Evidence Act and the Easements Act. The provision reproduced in sub-section (2) was inserted in the Act of 1892 for the purpose of removing this inconvenience.

(*c*) Sir Charles Wood, when Secretary of State for India, in a dispatch dated December 1, 1862, addressed the Government of India as follows:—

'Cases, no doubt, will occasionally occur when special legislation by the local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

'It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should from time to time be incorporated in it. And the duty of maintaining this uniformity, of course, devolves upon your Excellency in Council.

'As a general rule, for the guidance of the local councils, it would probably be expedient—and this appears also to be your own view—that all bills containing penal clauses should be submitted for your previous sanction.'

In consequence of this dispatch all Bills introduced into a local legislature and containing penal clauses are required to be sent to the Government of India for consideration as to the penal clauses.

As to what would amount to an alteration of the Penal Code, see Minutes by Sir H. S. Maine, Nos. 5 and 6.

(*d*) Among the Acts which a local legislature cannot 'affect' is the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), and, consequently, questions have arisen as to the validity of laws affecting the jurisdiction of the chartered high court. It has been held that the Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the courts established by the local legislature, and that such Acts are not void merely because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the high court (*Premshankar Raghunathji* v. *Government of Bombay*, 8 Bom. H. C. Rep. A. C. I. 195). Also that the Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the high court in dealing with those rights and obligations (*Collector of Thana* v. *Bhaskar Mahadev Rheth*, I. L. R., 8 Bom. 264).

The power of the Governor-General in Council to affect by legislation the prerogative of the Crown is expressly recognized by statute (see below, s. 79). It may be inferred that the local legislatures do not possess this power.

Business at legislative meetings.

77.—(1) At a legislative meeting of the Governor of Madras in Council or of the Governor of Bombay in Council, and at a meeting of a Lieutenant-Governor in Council, no

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[24 & 25 Vict. c. 67, ss. 37, 38, 48. 55 & 56 Vict. c. 14, s. 2.]

(2) At any such meeting no motion may be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business] (*a*).

(3) Provided that the Governors in Council of Madras and Bombay respectively, and the lieutenant-governor of any province having a local legislature, may, with the sanction of the Governor-General in Council, make rules for authorizing at any legislative meeting of their respective councils the discussion of the annual financial statement of their respective local Governments and the asking of questions, but under such conditions and restrictions as to subject or otherwise as may in the rules applicable to those councils respectively be prescribed or declared. But no member at any legislative meeting of any such council has power to submit or propose any resolution or to divide the council in respect of any such financial discussion or the answer to any question asked under the authority of this sub-section or the rules made under this sub-section (*b*).

(4) It is not lawful for any member of any such council to introduce, without the previous sanction of the governor or lieutenant-governor, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(5) Rules for the conduct of business at legislative meetings of the Governor of Madras in Council, or of the Governor of Bombay in Council, or of any Lieutenant-Governor in Council, may be made and amended at legislative meetings of the council, subject to the assent of that governor or lieutenant-governor, but any such rule may be disallowed

by the Governor-General in Council, and if so disallowed shall have no effect: Provided that rules made under this section with respect to the discussion of the annual financial statement and the asking of questions are not to be subject to amendment as aforesaid.

(*a*) The words in square brackets are not in the Act of 1861, but represent the existing practice.

(*b*) This qualification on the restrictions imposed by the Act of 1861 was introduced by the Act of 1892.

78.—(1) When an Act has been passed by the council of a governor at a legislative meeting thereof, or by the council of a lieutenant-governor, the governor or lieutenant-governor, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If the governor or lieutenant-governor withholds his assent from any such Act, the Act has no effect.

(3) If the governor or lieutenant-governor assents to any such Act he must forthwith send an authentic copy of the Act to the governor-general, and the Act has not validity until the governor-general has assented thereto, and that assent has been signified by the governor-general to the governor or lieutenant-governor, and published by the governor or lieutenant-governor.

(4) Where the governor-general withholds his assent from any such Act he must signify to the governor or lieutenant-governor in writing his reason for so withholding his assent (*a*).

(5) When any such Act has been assented to by the governor-general, he must send to the Secretary of State an authentic copy thereof, and it is lawful for Her Majesty to signify through the Secretary of State in Council her disallowance of any such Act.

(6) Where the disallowance of any such Act has been so signified the governor or lieutenant-governor must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly.

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(*a*) Assent has been withheld on one or more of the following grounds:—

(1) that the principle or policy of the Act, or of some particular provision of the Act, is unsound;

(2) that the Act, or some provision of the Act, is *ultra vires* of the local legislature;

(3) that the Act is defective in form.

With respect to (3) the recent practice of the Government of India has, it is believed, been to avoid as much as possible criticism of the drafting of local Bills or Acts.

Validity of Indian Laws.

Removal of doubts as to validity of certain laws. [24 & 25 Vict. c. 67, ss. 14, 24, 33, 48. 34 & 35 Vict. c. 34, s. 1.]

79. A law made by any authority in India is not invalid solely on account of any one or more of the following reasons:—

(*a*) in the case of a law made by the Governor-General in Council, because it affects the prerogative of the Crown (*a*):

(*b*) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction to the Council or its enactment:

(*c*) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature by Acts duly made could lawfully confer on magistrates in the exercise of authority over natives in the like cases (*b*).

(*a*) This saving does not appear to apply to the local legislatures. As to the prerogatives of the Crown, see note (*a*) on s. 37.

(*b*) An Indian Act (XXII of 1870) was passed to confirm certain previous Acts of the Madras and Bombay legislatures which had been adjudged invalid on the ground of interference with the rights of European British subjects. See *R.* v. *Reay*, 7 Bom. Cr. 6, and the speeches of Mr. FitzJames Stephen in the Legislative Council in 1870, Proceedings, pp. 362, 384. As Indian legislation could not confer on local legislatures the requisite power in the future, it was conferred by an Act of Parliament in 1871 (34 & 35 Vict. c. 34).

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, TEMPORARY APPOINTMENTS, ETC.

Salaries and allowances of governor-general and certain other officials in India. [33 Geo. III, c. 52, s. 32. 3 & 4 Will. IV, c. 85, ss. 76, 77. 16 & 17 Vict. c. 95, s. 35. 43 Vict. c. 3, ss. 2, 4.]

80.—(1) There are to be paid to the Governor-General of India and to the other persons mentioned in the First Schedule to this Digest, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in the said schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and subject to or in default of any such order, as are now payable.

(2) Provided as follows:—

(*a*) An order affecting salaries may not be made without the concurrence of a majority of votes at a meeting of the Council of India;

(*b*) If any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section must be reduced by the amount of the pension, salary, or profits of office so held or enjoyed by him;

(*c*) Nothing in the provisions of this section with respect to allowances authorizes the imposition of any additional charge on the revenues of India.

(3) The salary payable to a person under this section commences on his taking upon himself the execution of the office to which the salary is attached, and is to be the whole profit or advantage which he enjoys during his continuance in the office (*a*).

(*a*) The salaries of the governor-general, governors, and members of council were fixed at what is shown as the maximum in the First Schedule by 3 & 4 Will. IV, c. 85, s. 76; but were there declared to be subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit.

The salary of the commander-in-chief and of lieutenant-

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The view adopted in this Digest is that these salaries can be fixed at any amount not exceeding the amounts specified in the Acts of 1833 and 1853. The power to reduce has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently.

The allowances for equipment and voyage of the officers mentioned in the First Schedule (and also of the bishops and archdeacons of Calcutta, Madras, and Bombay) may, under the Indian Salaries and Allowances Act, 1880 (43 Vict. c. 3), be fixed, altered, or abolished by the Secretary of State in Council. But nothing in that Act was to authorize the imposition of any additional charge on the revenues of India.

Sub-section (3) is taken from s. 76 of the Act of 1833.

Under 33 Geo. III, c. 52, s. 33, a commander-in-chief was not to be entitled to any salary or emolument as member of council, unless it was specially granted by the Court of Directors.

The salaries and allowances now paid under the enactments reproduced in this Digest are as follows:—

Officer.	*Salary.*	*Equipment and Voyage* [1].
	Rs.	£
Viceroy and Governor-General	2,50,800	3,500
Governors of Bombay and Madras	1,20,000	1,000
Commander-in-Chief	1,00,000	500
Lieutenant-Governor	1,00,000	—
Member of Governor-General's Council	76,800	300
Member of Council, Madras and Bombay	61,440	—
Chief Justice, Calcutta	72,000	300
Puisne Judges, Calcutta	45,000	
Chief Justice, Madras	60,000	
Puisne Judges, Madras	45,000	
Chief Justice, Bombay	60,000	
Puisne Judges, Bombay	45,000	
Bishop of Calcutta	45,977	300
Bishops of Madras and Bombay	25,600	
Archdeacon, Calcutta	Pay as Senior Chaplains	
,, Madras		
,, Bombay	Rs. 3,200	

[1] These allowances are not payable unless the officer is resident in Europe at the time of the appointment.

Leave of absence to members of council. [24 & 25 Vict. c. 67, s. 26.]

81.—(1) The Governor-General in Council and the Governors of Madras and Bombay in Council respectively may grant to any of the ordinary members of their respective councils leave of absence under medical certificate for a period not exceeding six months.

(2) Where an ordinary member of council obtains leave of absence in pursuance of this section, he retains his office during his absence, and on his return and resumption of his duties is entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office becomes vacant.

Provision as to absence from India or province. [33 Geo. III, c. 52, s. 37. 7 Geo. IV, c. 56, s. 31. 3 & 4 Will. IV, c. 85, s. 79. 7 Will. IV, and 1 Vict. c. 47.]

82.—(1) If the governor-general, the Governor of Madras, the Governor of Bombay, or the commander-in-chief of Her Majesty's forces in India, and, subject to the foregoing provisions of this Digest as to leave of absence, if any ordinary member of the council of the governor-general, or of the Governor of Madras or Bombay, departs from India intending to return to Europe, his office thereupon becomes vacant (*a*).

[(2) No act or declaration of any governor-general, governor, or member of council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to the secretary for the public department of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office (*b*).]

[(3) If the governor-general, or any ordinary member of the governor-general's council, leaves India otherwise than in the known actual service of the Crown, and if any governor, lieutenant-governor, or ordinary member of a governor's council leaves the presidency to which he belongs otherwise than as aforesaid, his salary and allowances are not payable during his absence to any person for his use (*c*).]

[(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence and whilst intending to return to India or to his presidency, his salary and allowances will, subject to any rules in that behalf made by

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the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his presidency, or returns to Europe, his salary and allowances will be deemed to have ceased on the day of his leaving India or his presidency (*d*).]

(*a*) Under 33 Geo. III, c. 52, s. 37, 'the departure from India of any governor-general, governor, member of council, or commander-in-chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office,' and his arrival in any part of Europe is to be a sufficient indication of such intent. The Act of 1833 (3 & 4 Will. IV, c. 85, s. 73) enacts in almost identical words that the return to Europe, or departure from India with intent to return to Europe, of any Governor-General of India, governor, member of council, or commander-in-chief, is to be deemed in law a resignation and avoidance of his office or employment. These provisions have been qualified as to members of council by the power to grant sick leave under the Act of 1861 (see s. 82). But when the Duke of Connaught wished to visit England in the Jubilee year during his term of office as commander-in-chief in the Bombay Presidency a special Act had to be passed (50 Vict. sess. 2, c. 10).

(*b*) This sub-section reproduces a provision in s. 79 of the Act of 1833, which was copied from a similar provision in the Act of 1793. The provision possibly arose out of the circumstances attending Warren Hastings' resignation in 1776 (see above, p. 67), but does not appear to be observed in practice.

(*c*) This sub-section is intended to reproduce as far as practicable the effect of the enactments still in force on this subject, but their language is not clear, and was framed with reference to circumstances which no longer exist.

Section 37 of the Act of 1793 enacts that 'if any such governor-general or any other officer whatever in the service of the said Company shall quit or leave the presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such presidency or settlement, any law or usage to the contrary notwithstanding.'

An Act of 1826 (7 Geo. IV, c. 56, s. 3), after referring to this provision, enacts that the 'Company may cause payment to be made to the representatives of officers in their service, civil or military, who, having quitted or left their stations and not having

proceeded or intended to proceed to Europe, intending to return to their stations, have died or may hereafter happen to die during their temporary absence within the limits of the said Company's charter or at the Cape of Good Hope, of such salaries and allowances, or of such portions of salaries and allowances, as the officers so dying would have been entitled to if they had returned to their station.'

Section 79 of the Act of 1833 enacts that 'if any such governor-general or member of council of India shall leave the said territories, or if any governor or other officer whatever in the service of the said Company shall leave the presidency to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his leaving the said territories or the presidency to which he may have belonged. Provided that it shall be lawful for the said Company to make such payment as is now by law permitted to be made to the representatives of their officers or servants who, having left their stations intending to return thereto, shall die during their absence.'

An Act of 1837 (7 Will. IV, c. 47) enacts that these provisions in the Acts of 1793 and 1833 are 'not to extend to the case of any officer or servant of the Company under the rank of governor or member of council who shall quit the presidency to which he shall belong in consequence of sickness under such rules as may from time to time be established by the Governor-General of India in Council, or by the Governor in Council of such presidency, as the case may be, and who shall proceed to any place within the limits of the East India Company's charter, or to the Mauritius, or to the island of St. Helena, nor to the case of any officer or servant of the said Company under such rank as aforesaid who, with the permission of the Government of the presidency to which he shall belong, shall quit such presidency in order to proceed to another presidency for the purpose of embarking thence for Europe, until the departure of such officer or servant from such last-mentioned presidency with a view to return to Europe, so as that the port of such departure for Europe shall not be more distant from the place which he shall have quitted in his own presidency than any port of embarkation within such presidency.'

These rules were to require the approval of the Court of Directors and the Board of Control.

Finally, s. 32 of the Act of 1853 (see s. 89 of the Digest) declared that 'Nothing in any enactment now in force, or any charter relating to the said Company, shall be taken to prevent the establishment, by the Court of Directors (under the direction and control of the said Board of Commissioners), from time to time, of any regulations which they may deem expedient in relation to

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the absence on sick leave or furlough of all or any officers and persons in the service of the said Company in India, or receiving salaries from the said Company there, under which they respectively may be authorized to repair to and reside in Europe or elsewhere out of the limits of the said Company's charter, without forfeiture of pay or salary, during the times and under the circumstances during and under which they may now be permitted (while absent from their duty) to reside in places out of India within the limits of the said Company's charter, or during such times and under such circumstances as by such regulations may be permitted.'

The powers conferred by the Act of 1853 would seem to override the previous provisions as to salary, but not the previous provisions as to vacation of office.

(*d*) The last two sub-sections are inserted as a rough reproduction of the Act of 1826, and of an enactment in the Act of 1853, but it is doubtful whether these enactments are still law, and whether they are not superseded by regulations under the Act of 1853.

Conditional appointments. [3 & 4 Will. IV, c. 85, s. 61. 24 & 25 Vict. c. 67, ss. 2, 5.]

83.—(1) Her Majesty may by warrant under her Sign Manual appoint any person conditionally to succeed to any of the offices of governor-general, governor, or ordinary member of the council of the governor-general or of the Governor of Madras or Governor of Bombay, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and to revoke any such conditional appointment (*a*).

(2) A person so conditionally appointed is not entitled to any authority, salary, or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

(*a*) By 3 & 4 Will. IV, c. 85, the power of making conditional appointments to the offices of governor-general, governor, and member of the Council of Madras and Bombay was vested in the Court of Directors, and consequently is now vested in the Secretary of State (21 & 22 Vict. c. 106, s. 3).

Under 24 & 25 Vict. c. 67, s. 5, the power of making conditional appointments to the office of ordinary member of the governor-general's council is apparently exercisable either by the Queen, or by the Secretary of State with the concurrence of a majority of the Council of India.

In practice, the power is in all these cases exercised by the Queen only.

84.—(1) If any person entitled under a conditional

appointment to succeed to the office of governor-general on the occurrence of a vacancy therein, or appointed absolutely to that office, is in India on or after the occurrence of the vacancy, or on or after the receipt of the absolute appointment, as the case may be, and thinks it necessary to exercise the powers of governor-general before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general.

Power for governor-general to exercise powers before taking seat. [21 & 22 Vict. c. 106, s. 63.]

(2) After the proclamation, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws at legislative meetings.

(3) All acts done in the council after the date of the proclamation, but before the communication thereof to the council, are valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, if there is, at any time before the governor-general takes his seat in council, no president of the Council authorized to preside at legislative meetings, the senior ordinary member of council then present presides therein, with the same powers as if a president had been appointed and were absent.

85.—(1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the Governor of Madras, or the Governor of Bombay, whichever has been first appointed to the office of governor by Her Majesty, is to hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

Provision for temporary vacancy in office of governor-general. [3 & 4 Will. IV, c. 85, s. 62. 24 & 25 Vict. c. 67, ss. 50, 51.]

(2) Every such acting governor-general, while acting as such, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the

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emoluments and advantages appertaining to the office, forgoing the salary and allowances appertaining to his office of governor; and his office of governor is supplied for the time during which he acts as governor-general in the manner directed by law with respect to vacancies in the office of governor.

(3) If, on the vacancy occurring, it appears to the governor who by virtue of this provision holds and executes the office of governor-general necessary to exercise the powers thereof before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Digest respecting the assumption of the office by a person conditionally appointed to succeed thereto apply.

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply such vacancy, the senior ordinary member of council holds the office of governor-general until the vacancy is filled in accordance with the provisions of this Digest (*a*).

(5) Every ordinary member of council so acting as governor-general, while so acting, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of council for that period.

(*a*) Thus, on Lord Mayo's death in 1872, Sir John Strachey acted as governor-general from February 9 until the arrival of Lord Napier of Merchistoun on February 23.

Provision for temporary vacancy in office of Governor of Madras or Bombay. [3 & 4 Will. IV, c. 85, s. 63.]

86.—(1) If a vacancy occurs in the office of Governor of Madras or Bombay when no conditional or other successor is on the spot to supply the vacancy, the senior ordinary member of the governor's council or, if there is no council, the senior secretary to the local Government (*a*), holds and executes the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor is, while acting as such, entitled to receive the emoluments and advantages appertaining to the office of governor, forgoing the salary and allowances appertaining to his office of member of council or secretary.

(*a*) The Act of 1833 contained a power to abolish these councils.

Provision for temporary vacancy in office of ordinary member of council. [3 & 4 Will. IV, c. 85, s. 64. 24 & 25 Vict. c. 67, s. 27.]

87.—(1) If a vacancy occurs in the office of an ordinary member of the council of the governor-general, or of the council of the Governor of Madras or Bombay, when no person conditionally appointed to succeed thereto is present on the spot, the vacancy is to be supplied by the appointment of the Governor-General in Council or Governor in Council, as the case may be.

(2) Until a successor arrives the person so appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and is entitled to receive the emoluments and advantages appertaining to the office during his continuance therein, forgoing all salaries and allowances by him held and enjoyed at the time of his being appointed to that office.

(3) If any ordinary member of any of the said councils is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, and if any person has been conditionally appointed as aforesaid, the place of the member so incapable or absent is to be supplied by that person.

(4) If no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, is to appoint some person to be a temporary member of council, and, until the return to duty (*a*) of the member so incapable or absent, the person conditionally or temporarily appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and receives half the salary of the member of council whose place he supplies, and also half the salary of any other office he may hold, if

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he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, whichever may appoint to the office.

(5) Provided as follows :—

(*a*) No person may be appointed a temporary member of council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by the temporary appointment; and

(*b*) If the Secretary of State informs the governor-general that it is not the intention of Her Majesty to fill a vacancy in the council of the governor-general, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed ceases from that date.

(*a*) The words 'to duty' are not in the Act, but seem to express the intention.

Vacancies amongst additional members of council. [24 & 25 Vict. c. 67, ss. 12, 31. 55 & 56 Vict. c. 14, s. 4.]

88.—(1) An additional member of the council of the governor-general or of a governor, or a member of the council of a lieutenant-governor, may resign his office to the governor-general or to the governor or lieutenant-governor, and on the acceptance of the resignation the office becomes vacant.

(2) If any such additional member or member is absent from India or unable to attend to the duties of his office for a period of two consecutive months, the governor-general, governor, or lieutenant-governor, as the case may be, may declare by a notification published in the Government Gazette, that the seat in council of that additional member or member has become vacant.

(3) In the event of a vacancy occurring by reason of the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted of any such additional member or member, the governor-general, governor,

or lieutenant-governor, as the case may be, may nominate any person as an additional member or member, as the case may be, in his place, and every additional member or member so nominated must be summoned to all meetings of the legislative council to which he belongs for the term of two years from the date of his nomination: Provided that it is not lawful by any such nomination to diminish the proportion of non-official members required by law (*a*).

(*a*) The provisions in the Act of 1861 as to the resignation of additional members were modified and supplemented by the Act of 1892.

Leave on furlough. [16 & 17 Vict. c. 95, s. 32.]

89. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations as to the absence on sick leave or furlough of persons in the service of the Crown in India, and the terms as to continuance or diminution of pay, salary, and allowances on which any such sick leave or furlough may be granted.

Power to make regulations as to Indian appointments. [3 & 4 Will. IV, c. 85, s. 78. 21 & 22 Vict. c. 106, ss. 30, 37.]

90. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations for distributing between the several authorities in India the power of making appointments to and promotions in offices, commands, and employments under the Crown in India.

PART VIII.

THE CIVIL SERVICE OF INDIA.

No disabilities in respect of religion, colour, or place of birth. [3 & 4 Will. IV, c. 85, s. 17.]

91. No native of British India, nor any natural-born subject of Her Majesty resident therein, is, by reason only of his religion, place of birth, descent, or colour, or any of them, disabled from holding any place, office, or employment under Her Majesty in India.

This reproduces s. 87 of the Act of 1833, with the substitution of 'British India' for 'the said territories,' and 'Her Majesty in

CH. III. India for 'the said Company.' See the comments on this enactment in pars. 103–109 of the dispatch of December 10, 1834, below, p. 528.

Regulations for admission to civil service. [21 & 22 Vict. c. 106, s. 32.]

92.—(1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make regulations for the examination of natural-born subjects of Her Majesty desirous of becoming candidates for appointment to the Civil Service of India.

(2) The regulations prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) Every regulation made in pursuance of this section must be forthwith laid before Parliament.

(4) The candidates certified to be entitled under the regulations must be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Civil Service of India by the Secretary of State in Council (*a*).

(*a*) The civil service referred to in these sections is the service which used to be known as the covenanted civil service, but which, under the rules framed in pursuance of Sir Charles Aitchison's Commission, is designated the Civil Service of India. See above, p. 128.

Where a child of a father or mother who has been naturalized under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), has during infancy become resident with the father or mother in any part of the United Kingdom he is, by virtue of s. 10 (5) of that Act, a naturalized British subject, and is entitled to be treated under the enactment reproduced by this clause as if he were a natural-born British subject. The expression includes a native of British India, but would, apparently, not include a subject of a Native State in India.

Offices reserved to civil servants. [24 & 25 Vict. c. 54, s. 2. 33 Geo. III, c. 52, s. 57.]

93. Subject to the provisions of this Digest, all vacancies happening in any of the offices specified or referred to in the Second Schedule to this Digest, and all such offices which may be created hereafter, must be filled from amongst the members of the Civil Service of India belonging to the presidency wherein the vacancy occurs.

The provision of the Act of 1793 as to filling vacancies from

among members belonging to the same presidency appears to be still in force, but has given rise to practical difficulties, and seems inapplicable to such offices as that of secretary to the Government of India.

Power to appoint natives of India to reserved offices. [33 & 34 Vict. c. 3, s. 6.]

94.—(1) The authorities in India by whom appointments are made to offices in the Civil Service of India may appoint any native of India of proved merit and ability to any such office, although he has not been admitted to that service in accordance with the foregoing provisions of this Digest.

(2) Every such appointment must be made subject to such rules as may be prescribed by the Governor-General in Council, and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) For the purposes of this section the expression 'native of India' includes any person born and domiciled in British India, of parents habitually resident in British India, and not established there for temporary purposes only; and the Governor-General in Council may by resolution define and limit the qualification of natives of India thus expressed; but every resolution made by him for that purpose will be subject to the sanction of the Secretary of State in Council, and will not have force until it has been laid for thirty days before both Houses of Parliament.

The enactment reproduced by this section is not very clearly expressed, and runs as follows;—

'Whereas it is expedient that additional facilities should be given for the employment of natives in India, of proved merit and ability, in the civil service of Her Majesty in India: Be it enacted, that nothing in the Government of India Act, 1858, or in the Indian Civil Service Act, 1861, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the civil service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in s. 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present; and that for the purpose of this Act the words

CH. III. "natives of India" shall include any person born or domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of natives of India thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.'

For the history of the successive rules made under this section, see above, p. 127. The expression 'native of India' as defined by the section is construed as including persons born or domiciled in a Native State.

Power to make provisional appointments in certain cases. [24 & 25 Vict. c. 54, ss. 3, 4.]

95.—(1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Civil Service of India, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

(2) Every such appointment is provisional only, and must forthwith be reported to the Secretary of State in Council, with the special reasons for making it; and unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment notifies such approval to the authority by whom the appointment was made, the appointment must be cancelled.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

Constitution of high courts. [24 & 25 Vict. c. 104, ss. 2, 19.]

96.—(1) (*a*) Each high court consists of a chief justice, and as many judges, not exceeding fifteen (*b*), as Her Majesty may think fit to appoint.

(2) A judge of a high court must be—

(*a*) A barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) A member of the Civil Service of India of not less than ten years' standing, and having for at least three years served as or exercised the powers of a district judge; or

(*c*) A person having held judicial office not inferior to that of a subordinate judge, or a judge of a small cause court, for a period of not less than five years; or

(*d*) A person having been a pleader (*c*) of a high court for a period of not less than ten years.

(3) Provided that not less than one-third of the judges of a high court, including the chief justice, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Civil Service of India.

(*a*) There are four chartered high courts: at Calcutta, Madras, Bombay, and Allahabad.

(*b*) The number of judges is at present: Calcutta, 13; Madras, 6; Bombay, 7; Allahabad, 6.

(*c*) The word 'pleader' in the enactment reproduced by this section apparently includes every one who has for ten years been allowed to 'plead' in the Indian sense, i. e. to act as a barrister in the high court, though not a barrister or member of the Faculty of Advocates.

Tenure of office of judges of high courts. [24 & 25 Vict. c. 204, s. 4.]

97.—(1) Every judge of a high court holds his office during Her Majesty's pleasure (*a*).

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in the case of any other high court to the local

CH. III. Government of the province in which the high court is established.

(*a*) As to tenure during pleasure, see the note on s. 21 above.

Precedence of judges of high courts. [24 & 25 Vict. c. 104, s. 5.]

98.—(1) The chief justice of a high court has rank and precedence before the other judges of the same court.

(2) All the other judges of a high court have rank and precedence according to the seniority of their appointments, unless otherwise provided by the terms of their appointment.

Salaries, &c., of judges of high courts. [24 & 25 Vict. c. 104, s. 6.]

99. The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the chief justices and judges of the several high courts, and from time to time alter them, but any such alteration does not affect the salary of any judge appointed before the date thereof.

For existing salaries and allowances, see note on s. 80.

Provision for vacancy in the office of chief justice or other judge. [24 & 25 Vict. c. 104, s. 7.]

100.—(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, is to appoint one of the judges of the same high court to perform the duties of chief justice of the court until some person has been appointed by Her Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires (*a*).

(2) On the occurrence of a vacancy in the office of any other judge of any such high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council or local Government, as the case may be, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the high court; and the person so appointed may sit and perform the duties of a judge of the court until some person has been appointed by

Her Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or local Government sees cause to cancel the appointment of the acting judge (*b*).

(*a*) Apparently the person appointed to act for the chief justice need not be a barrister-judge, though the chief justice himself must be a barrister. See s. 97 above.

(*b*) The appointment remains in force until the occurrence of one of the contingencies mentioned in this sub-section, and hence cannot be made for a specified time. Probably the 'acting judge' referred to at the end of the sub-section is the judge acting as chief justice referred to above.

Jurisdiction.

Jurisdiction of high courts. [13 Geo. III, c. 63, ss. 13, 14. 21 Geo. III, c. 70, s. 8. 33 Geo. III, c. 52, s. 156. 37 Geo. III, c. 142, s. 11. 39 & 40 Geo. III, c. 79, ss. 2, 5. 4 Geo. IV, c. 71, ss. 7, 17. 24 & 25 Vict. c. 104, s. 9.]

101.—(1) Subject to any law made by the Governor-General in Council (*a*), the several high courts have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by charter, and subject to the provisions of any such law or charter, all such jurisdiction, powers, and authority as were vested in any of the courts in the same presidency abolished by the Indian High Courts Act, 1861, at the date of their abolition (*b*).

(2) Each of the high courts at Calcutta, Madras, and Bombay is a court of record and a court of oyer and terminer and gaol delivery for the territories under its jurisdiction.

(3) Subject to any law which may be made by the Governor-General in Council, the said high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the regulations for the time being in force (*c*).

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(*a*) This power is reserved by s. 9 of the Indian High Courts Act, 1861.

(*b*) The jurisdiction of the chartered high courts in India is based partly on their charters and partly on parliamentary enactments applying either to the high courts themselves or to their predecessors.

The charters will be found in Chapter v, p. 351.

The statutory enactments still unrepealed with respect to the jurisdiction of the high court are as follows:—

By s. 13 of the Regulating Act of 1773 (13 Geo. III, c. 63) the Supreme Court of Judicature at Fort William was declared to have full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint clerks and other ministerial officers, and to form and establish such rules of practice, and such rules for the process of the court, and to do all such other things as might be found necessary for the administration of justice and the due execution of all or any of the powers which by the charter might be granted and committed to the court. It was also to be at all times a court of record and a court of oyer and terminer and gaol delivery in and for the town of Calcutta and factory of Fort William, and the limits thereof, and the factories subordinate thereto.

Under s. 14 of the same Act, the new charter of the court, and the jurisdiction, powers, and authorities to be thereby established, were to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or any of them, under the protection of the Company, and the court was to have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crime, misdemeanours, or oppressions, and to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar, and Orissa, and any suit, action, or complaint against any person who at the time when the debt or cause of action or complaint had arisen had been employed by, or been directly or indirectly in the service of, the Company, or of any of His Majesty's subjects.

Section 156 of the East India Company Act, 1793 (33 Geo. III, c. 52), enacted and declared that the power and authority of the supreme court at Calcutta extended to the high seas, and that the court should have full power and authority to inquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects resident in the town of Calcutta, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanours, offences, excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the Admiralty of England, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty and violators of the laws, in like and in as ample manner to all intents and pur-

poses as the said court might or could do if the same were done, perpetrated, or committed within the limits prescribed by the charter, and not otherwise or in any other manner.

The East India Act, 1797 (37 Geo. III, c. 142), after providing for the erection of courts of judicature at Madras and Bombay, gave those courts, by s. 11, the jurisdiction formerly exercisable by the mayor's court at Madras and at Bombay, or by the courts of oyer and terminer or gaol delivery there, and declared, by s. 13, that these courts were to have full power to hear and determine all suits and actions that might be brought against the inhabitants of Madras and Bombay respectively in manner provided by the charter, subject however to the proviso reproduced in s. 108 of this Digest.

The Government of India Act, 1800 (39 & 40 Geo. III, c. 78), authorized the grant of a charter for the establishment of a supreme court at Madras. It was (s. 2) to have full power to exercise such civil, criminal, admiralty, and ecclesiastical jurisdiction, both as to natives and British subjects, and to be invested with such powers and authorities, privileges and immunities, for the better administration of the same, and to be subject to the same limitations, restrictions, and control within Fort St. George and the town of Madras, and the limits thereof, and the factories subordinate thereto, and within the territories subject to or dependent on the Government of Madras, as the supreme court at Fort William was invested with or subject to within Fort William or the kingdoms or provinces of Bengal, Behar, and Orissa.

The Indian Bishops and Courts Act, 1823 (4 Geo. IV, c. 71, s. 7), authorized the grant of a charter for the establishment of a supreme court at Bombay with jurisdiction corresponding to that previously given to the supreme court at Madras, and declared, by s. 17, that the supreme courts at Madras and Bombay were to have the same powers as the supreme court at Fort William in Bengal.

In 1828 an Act (9 Geo. IV, c. 74) was passed for improving the administration of criminal justice in the East Indies. The only sections now unrepealed in this Act are ss. 1, 7, 8, 9, 25, 26, 56, and 110. By s. 1 the Act is declared to extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of His Majesty's courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Sections 7, 8, and 9, which relate to accessories, and s. 52, which relates to punishments, are apparently superseded as to admiralty cases by the Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), and the Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88) (see *The Queen Empress* v. *Barton*, I. L. R. 16 Cal. 238), and as to other cases by the Indian Codes.

Section 26 lays down a rule for interpreting criminal statutes, corresponding to the rule embodied for India in the General Clauses

CH. III. Act of 1897, and for the United Kingdom in the Interpretation Act, 1889.

Section 56 extends to British India the provisions previously enacted for England by 9 Geo. IV, c. 31, s. 8, with respect to offences committed in two different places, or partially committed in one place and completed in another, but has been held not to make any person liable to punishment for a complete offence who would not have been so liable before. See *Nga Hoong* v. *Reg.*, 7 Moo. Ind. App. 72, 7 Cox C.C. 489. In this case some Burmese native subjects of the East India Company committed a murder on the Cocos Islands, which were then uninhabited islands in the Bay of Bengal, within the limits of the Company's charter. They were convicted under the Act of 1828 by the supreme court of Calcutta, but the conviction was reversed by the Privy Council. It was held that the place in which the offence was committed was, but the offenders personally were not, within the jurisdiction conferred by the statute, and that the object of the statute was only to apply to the East Indies the enactment previously passed for England.

Section 110 of the Act of 1828 has been repealed, except so far as it is in force in the Straits Settlement.

The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), enacts that if any person within any colony (which is to include British India, 23 & 24 Vict. c. 88, s. 1) is charged with the commission of any offence committed upon the sea or in any haven, river, creek, or place where the admiral has jurisdiction, or being so charged is brought for trial to any colony, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in the colony are to have the same jurisdiction and authority with respect to the offence as if the offence had been committed upon any waters situate within the limits of the local jurisdiction of the courts of criminal justice of the colony.

The Act further enacts (s. 3) that where any person dies in any colony of any stroke, poisoning, or hurt, having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral has jurisdiction, or at any place out of the colony, every offence committed in respect of any such case, whether amounting to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with and punished in the colony as if the offence had been wholly committed in the colony; and if any person is charged in any colony with any such offence resulting in death on the sea, or in any such haven, &c., the offence is to be held for the purposes of the Act to have been wholly committed upon the sea.

The Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88), provides (s. 2) that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the Act of 1849, or, being so charged, is brought for trial under that Act to any place in India, if before

his trial he makes it appear that if the offence charged had been committed in that place he could have been tried only in the supreme court of one of the three presidencies in India, and claims to be so tried, the fact is to be certified, and he is to be sent for trial and tried accordingly.

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), abolished the supreme courts at Calcutta, Madras, and Bombay, and the Company's courts of appeal at those places, and provided for the establishment by charter of high courts at those places.

Under s. 9, 'each of the high courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the presidency for which it is established, as Her Majesty may by such letters patent as aforesaid grant and direct; subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the presidency towns as may be prescribed thereby, and save as by such letters patent may be otherwise directed; and, subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the high court to be established in each presidency shall have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned courts.'

Section 11 declares that the existing provisions applicable to the supreme courts are to apply to the high courts.

The Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), enacts, by s. 3, that when, by virtue of any Act of Parliament, a person is tried in a court of any colony (which by s. 2 is to include British India) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the court, or, if committed within that local jurisdiction, made punishable by that Act, he shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of the colony and of the local jurisdiction of the court, and to no other. Provided that if the crime or offence is not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as seems to the court most nearly to correspond to the punishment to which he would have been liable if the crime or offence had been tried in England.

The Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), which was passed in consequence of the decision in the *Franconia* case (*R.* v. *Keyn*, 2 Ex. 169), and which extends to India, declares that an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the

CH. III. territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed the offence may be arrested, tried, and punished accordingly. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and is charged with any such offence as is declared by the Act to be within the jurisdiction of the admiral, are not to be instituted in British India except with the leave of the governor-general or the governor of the presidency. For the purpose of any offence declared by the Act to be within the jurisdiction of the admiral, any part of the sea within one marine league of the coast, measured from low-water mark, is to be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Legislature of British India may declare certain courts to be colonial courts of admiralty, and courts so declared have the admiralty jurisdiction described in the Act. Under this power the Legislature of India has, by Act XVI of 1891, s. 2, declared the high courts at Calcutta, Madras, and Bombay, as well as the courts of the recorder at Rangoon, the Resident at Aden, and the district court of Karachi, to be colonial courts of admiralty.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides, by s. 686, that 'where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed; but nothing in this section is to affect the Admiralty Offences (Colonial) Act, 1849.'

Section 687 of the same Act provides that 'all offences against property or person committed in or at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice who, at the time when the offence is committed, is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

It seems to follow from these several enactments, and from pars. 29 and 32 of the Charters, that where a chartered high court exercises jurisdiction in respect of—

(1) an offence committed on land, both the procedure and the substantive law to be applied are those of British India, i. e. both the Code of Criminal Procedure and the Penal Code apply;

(2) an offence committed at sea by a native of British India, the position is the same;

(3) an offence committed at sea by any other person, whether within territorial waters or beyond them, the procedure is regulated by British Indian law, but the nature of the crime and the punishment are determined by English law.

See *Queen Empress* v. *Barton*, I. L. R. 16 Cal. 238, and Mayne, Criminal Law of India, chap. ii.

(*c*) The enactment reproduced by this sub-section was probably suggested by the Patna case, as to which see Stephen's Nuncomar and Impey, chap. xii. In 1873 certain licensed liquor-vendors moved the high court at Calcutta for a mandamus to compel the Board of Revenue to issue rules prescribing the fees payable for liquor licences, but it was held that the matter related wholly to the revenue, and that therefore by 21 Geo. III, c. 70, s. 8, the high court had no jurisdiction (*Re Audur Chundra Shaw*, 11 Beng. L. R. 250). In a later Madras case (1876) doubts were expressed as to the extent to which the enactment was still in force, and, in particular, whether it had not been repealed except as to land revenue. See *Collector of Sea Customs* v. *Panniar Chithambaram*, I. L. R. 1 Mad. 89. In any case it applies only to the jurisdiction derived from the supreme court, i. e. to the original jurisdiction.

Powers of high court with respect to subordinate courts. [24 & 25 Vict. c. 104, s. 15.]

102. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things; that is to say—

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(*c*) make and issue general rules for regulating the practice and proceedings of such courts;

(*d*) prescribe forms for any proceedings in such courts, and for the mode of keeping any books, entries, or accounts by the officers of any such courts; and

(*e*) settle tables of fees to be allowed to the sheriffs, attorneys, and all clerks and officers of such courts.

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Provided that all such rules, forms, and tables require the previous approval, in the province of Bengal of the Governor-General in Council, and in the province of Madras or Bombay or the North-Western Provinces of the local Government (*a*).

(*a*) As to the relations of the high courts to the subordinate courts, see further above, p. 137.

Exercise of jurisdiction by single judges or division courts. [24 & 25 Vict. c. 104, ss. 13, 14.]

103.—(1) Subject to any law made by the Governor-General in Council, each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court determines what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

Power for Governor-General in Council to alter local limits of jurisdiction of high courts. [28 & 29 Vict. c. 15, ss. 3, 4, 6.]

104.—(1) (*a*) The Governor-General in Council may by order transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorize any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established (*b*), and also to exercise any such jurisdiction in respect of Christian (*c*) subjects of Her Majesty resident in any part of India outside British India (*d*).

(2) The Governor-General in Council must transmit to the Secretary of State an authentic copy of every order made under this section.

(3) Her Majesty may signify, through the Secretary of State in Council, her disallowance of any such order, and such disallowance makes void and annuls the order as from the day on which the governor-general makes known by proclamation or by signification to his council that he has received notification of the disallowance, but no act done by any high court before such notification is invalid by reason only of such disallowance.

(4) Nothing in this section affects any power of the Governor-General in Council in legislative meetings.

(*a*) As to the object and construction of this section, see Minutes by Sir H. S. Maine, No. 45.

(*b*) For orders made under this provision, see Notifications, Nos. 178, 180, 181, of September 23, 1874; Mayne, Criminal Law of India, p. 258. It would seem that s. 3 of the Act of 1865 (reproduced by this provision) only empowered the governor-general to make an order transferring any territory from the jurisdiction of one court to the jurisdiction of another, and that the second branch of the section was only to enable the governor-general to authorize the court to which such transfer was made to exercise jurisdiction. If this is so, then, to take an illustration from the North-Western Provinces, the Governor-General in Council could not either by order or legislation extend the local and personal jurisdiction of the high court in the North-Western Provinces over the province of Oudh, or authorize two of the judges of the high court to sit at Lucknow to try cases arising in Oudh, or empower the Chief Commissioner of Oudh to transmit cases from Oudh for trial at Allahabad by judges of the high court of the North-Western Provinces.

(*c*) 'The comprehensive term "Christian" was doubtless used because it might be convenient to give a particular high court matrimonial and testamentary jurisdiction over all Christian subjects.' Minutes by Sir H. S. Maine, Nos. 44, 45.

(*d*) i. e. in Native States. See s. 124.

Exemption from jurisdiction of high court in public capacity. [13 Geo. III, c. 63, ss. 15, 17. 21 Geo. III, c. 70, s. 1. 37 Geo. III, c. 142, s. 11. 39 & 40 Geo. III, c. 79, s. 3. 4 Geo. IV, c. 41, s. 7.]

105.—(1) Subject to any law made by the Governor-General in Council (*a*), the governor-general and each of the governors of Madras and Bombay, and each of the ordinary and extraordinary members of their respective councils, is not—

(*a*) subject to the original jurisdiction of any high court by reason of anything counselled, ordered, or done by any of them, in his public capacity only; nor

(*b*) liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

(*c*) subject to the original criminal jurisdiction of any high court in respect of any misdemeanour at common law, or under any Act of Parliament, or in respect of any act which if done in England would have been a misdemeanour.

(2) The exemption under this section from liability to arrest

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and imprisonment extends also to the chief justices and other judges of the several high courts.

(*a*) The enactments reproduced by this section apply only to the original jurisdiction of the high courts, and are not excepted from the legislative power of the governor-general's council by 24 & 25 Vict. c. 67, s. 22. The exemptions from jurisdiction granted by 21 Geo. III, c. 70, and reproduced in this section, were granted in consequence of the proceedings in the Cossijurah case. See above, p. 57, and Mayne, Criminal Law of India, p. 301.

Written order by governor-general a justification for any act in any court in India. [21 Geo. III, c. 70, ss. 2, 3, 4.]

106. Subject to any law made by the Governor-General in Council, the order in writing of the Governor-General in Council for any act is in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, a full justification of the act, except so far as the act extends to any [European] British subject of Her Majesty (*a*); but nothing in this section exempts the governor-general, or any member of his council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England.

(*a*) The expression in the Act of 1780 is 'British subjects,' which of course must be construed in the narrower sense. As to the circumstances out of which this enactment arose, see above, pp. 57, 58, and Mill's British India, iv. 373–375; Cowell's Tagore Lectures, p. 72; Nuncomar and Impey, ii. 189. As to the limitations formerly imposed on the powers of the Indian Governments in dealing with European British subjects, see *In re Ameer Khan*, 6 B. L. R. 446, and the notes on ss. 63 and 79 of this Digest. The enactments reproduced by this section do not apply to the Governments of Madras and Bombay. They are applied to the existing high courts by the conjoint operation of 39 & 40 Geo. III, c. 79, s. 3; 4 Geo. IV, c. 71, s. 7; and 24 & 25 Vict. c. 104, s. 11, but appear to affect only the original jurisdiction of the high courts.

Procedure in case of oppression, &c., by governor-general or his council. [21 Geo. III, c. 70, ss. 5, 6.]

107.—(1) (*a*) Subject to any law made by the Governor-General in Council, if any person makes a complaint in writing, and on oath, to the high court at Calcutta of any oppression or injury alleged to have been caused by any order of the governor-general, or any member of his council, and gives security to the satisfaction of the high court to prosecute his complaint by indictment, information, or action before a competent court in the United Kingdom

within two years from the making of the same or from the return into the United Kingdom of the person or persons complained against, he is entitled to have a true copy of any order of which he complains produced before the high court, and authenticated by the court, and he and the persons against whom he complains may examine witnesses on the matter of the complaint.

(2) The high court must, if necessary, compel the attendance and examination of witnesses in any such case in the same manner as in other criminal or civil proceedings.

(3) Sections forty to forty-five of the East India Company Act, 1772, apply in the case of proceedings under this section as in the case of the proceedings referred to in those sections. 13 Geo. III, c. 63.

(*a*) The provision reproduced by this section has remained a dead letter from the date of its enactment, appears to be unnecessary, and could be repealed by Indian legislation. It does not apply to the Madras High Court, *Re Wallace*, I. L. R. 8 Mad. 24.

The sections referred to in sub-section (3) give jurisdiction to the Court of Queen's Bench, now the high court, and provide for the taking of evidence in India, and its admissibility in England.

Law to be administered.

108. Subject to any law made by the Governor-General in Council, the high courts, in the exercise of their original jurisdiction, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or custom having the force of law, decide according to the law or custom to which the defendant is subject. Law to be administered in cases of inheritance and succession. [21 Geo. III, c. 70, s. 17. 37 Geo. III, c. 142, s. 13.]

This section reproduces the enactments marginally noted so far as they appear to represent existing law. The qualifying words at the beginning of the clause represent existing law, the enactments marginally noted being, under 24 & 25 Vict. c. 67, s. 22, capable of being altered by Indian legislation.

In Warren Hastings' celebrated plan for the administration of justice, proposed and adopted in 1772, when the East India Com-

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Subsequently, when the governor-general and council were invested by Parliament with the power of making regulations, the provisions and exact words of Warren Hastings' twenty-third rule were introduced into the first regulation enacted by the Bengal Government for the administration of justice. This regulation was passed on April 17, 1780.

By section 27 of this regulation it was enacted 'that in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to.' This section was re-enacted in the following year, in the revised Code, with the addition of the word 'succession.' Section 17 of the Act of 1781 constitutes the first express recognition of Warren Hastings' rule in the English Statute Law. Enactments to the same effect have since been introduced into numerous subsequent English statutes and Indian Acts,—see, for example, 37 Geo. III, c. 142, s. 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab) as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1889, s. 4 (Lower Burma). See also clauses 19 and 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

The effect of 21 Geo. III, c. 70, s. 17, is explained in *Sarkies* v. *Prosonno Mayi Dasi*, I. L. R. 6 Cal. 794 (application for dower by the widow of an Armenian), and *Jagat Mohini Dasi* v. *Dwarkanath Beisakh*, I. L. R. 8 Cal. 582 (where it was held that there was no question of succession or inheritance).

The Indian Contract Act (IV of 1872) contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed. This saving has been held to include the enactment reproduced by this section, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive. See *Nobin Chunder Bannerjee* v. *Romesh Chunder Ghose*, I. L. R. 14 Cal. 781, where it was held that the custom of *damdupat* (Law Quarterly Review for 1896, p. 45) was still in force in Calcutta. If, however, any native law or custom is already inconsistent with the terms of the Contract Act, it would

be held to be repealed. See *Madhub Chunder Poranamah* v. *Rajcoomar Doss*, 14 Beng. Law Rep. 76, p. 4.

The leading case on the extent to which English law has been introduced into India is the *Mayor of Lyons* v. *East India Company* (1836), reported 1 Moo. P. C. 176, and also, with useful explanatory and illustrative matter, 3 State Trials, N.S. 647. The Judicial Committee in this case laid down the principle that the general introduction of English law into a conquered or ceded country does not draw with it such parts as are manifestly inapplicable to the circumstances of the settlement, and decided in particular that the English law incapacitating aliens from holding real property to their own use and transmitting it by devise or descent had never been expressly introduced into Bengal, and that the Statute of Mortmain, 9 Geo. II, c. 36, did not apply to India. See also the famous judgement of Lord Stowell in *The Indian Chief*, (1800) 3 Rob. Adm. 12, at pp. 28, 29 (quoted below, p. 417); *Freeman* v. *Fairlie*, (1828) 1 Moo. Ind. App. 304, 2 State Trials, N. S. 1000; *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee*, (1863) 2 Moo. P. C., N.S. 22 (law as to forfeiture for suicide); and *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, (1876) L. R. 2 App. Cas. 186 (law as to maintenance and champerty). And as to the effect of successive charters in introducing English law into India, see above, p. 34; Morley's Digest, Introduction, pp. xi, xxiii; and Mr. Whitley Stokes' preface to the first edition of the older statutes relating to India (reprinted in the edition of 1881).

Advocate-General.

Appointment and powers of advocate-general.

109.—(1) Her Majesty may, by warrant under her Royal Sign Manual, appoint an advocate-general for each of the provinces of Bengal, Madras, and Bombay (*a*).

(2) The advocate-general for each of those provinces may take on behalf of Her Majesty such proceedings as may be taken by Her Majesty's Attorney-General in England (*b*).

[53 Geo. III, c. 155, s. 111. 21 & 22 Vict c. 106, s. 29.]

(*a*) The advocate-general for Bengal is a law officer of the Government of India.

(*b*) See *Secretary of State for India* v. *Bombay Landing and Shipping Company*, 5 Bom. H. C. R. O. C. J. 42, and Act X of 1875, ss. 144, 146.

PART X.

ECCLESIASTICAL ESTABLISHMENT.

Jurisdiction of Indian bishops. [53 Geo. III, c. 155, ss. 51, 52. 3 & 4 Will. IV, c. 85, ss. 92, 93, 94.]

110.—(1) The bishops of Calcutta, Madras, and Bombay (*a*) have and may exercise such ecclesiastical jurisdiction and episcopal functions as Her Majesty may, by letters patent, direct for the administering holy ceremonies, and for the superintendence and good government of the ministers of the Church of England within their respective dioceses.

(2) The Bishop of Calcutta is the metropolitan bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such metropolitan, and must at the time of his appointment to his bishopric or at the time of his consecration as bishop take an oath of obedience to the Bishop of Calcutta in such manner as Her Majesty by letters patent may be pleased to direct (*b*).

(4) Her Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras, and Bombay.

[37 & 38 Vict. c. 77, s. 13.]

(5) Nothing in this Digest or in any such letters patent as aforesaid prevents any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

(*a*) The bishops of Calcutta, Madras, and Bombay are the only Indian bishops who are appointed by letters patent, and who are referred to in the Acts relating to India. A copy of the form of letters patent used in the appointment of the Bishop of Calcutta is printed below, p. 576. The other Indian bishops (Chota Nagpore, Lahore, Lucknow, Rangoon, Tinnevelly, and Travancore) are, in accordance with the new practice adopted after the decision in the Natal case (*In re Bishop of Natal*, 3 Moo. P. C., N. S. 115; see also *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. 1), not appointed by letters patent, and have no coercive jurisdiction.

(*b*) As to these oaths, see 28 & 29 Vict. c. 122, and 31 & 32 Vict. c. 72, s. 14. Under 37 & 38 Vict. c. 77, s. 12, the archbishops of Canterbury or York may, in consecrating any person to

the office of bishop for the purpose of exercising episcopal functions elsewhere than in England, dispense with the oath of due obedience to the archbishop.

Power to admit to holy orders. [4 Geo. IV, c. 71, s. 6.]

111.—(1) The Bishop of Calcutta may admit into the holy orders of deacon or priest any person whom he, on examination, deems duly qualified specially for the purpose of taking on himself the cure of souls, or officiating in any spiritual capacity within the limits of the diocese of Calcutta, and residing therein.

(2) The deposit with the bishop of a declaration of such a purpose, and a written engagement to perform the same, signed by the person seeking ordination, is a sufficient title with a view to his ordination.

(3) It must be distinctly stated in the letters of ordination of every person so admitted to holy orders that he has been ordained for the cure of souls within the limits of the diocese of Calcutta only.

(4) Unless a person so admitted is a British subject, he is not required to take the oaths and make the subscriptions which persons ordained in England are required to take and make (*a*).

(*a*) The enactment reproduced by this section appears to apply only to the Bishop of Calcutta, and is probably unnecessary, as being covered by the general language of the letters patent enabling the Bishop of Calcutta to perform all the functions peculiar and appropriate to the office of bishop within the diocese of Calcutta.

Consecration of person resident in India appointed to bishopric. [3 & 4 Will. IV, c. 85, s. 99.]

112. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras, or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by Her Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorizing and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Salaries and allowances of

113.—(1) There may be paid to the bishops and archdeacons of Calcutta, Madras, and Bombay, out of the revenues

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bishops and archdeacons. [53 Geo. III, c. 155, ss. 49, 50. 4 Geo. IV, c. 71, ss. 3, 4, 5. 3 & 4 Will. IV, c. 85, ss. 90, 96, 97, 98, 100, 101. 5 & 6 Vict. c. 119, ss. 3, 4. 43 Vict. c. 3, ss. 2, 3.]

of India, such salaries (*a*), commencing from the time at which they take upon themselves the execution of their office, and such [pensions (*b*) and] allowances as may be fixed by the Secretary of State in Council, but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

(2) There are to be paid out of the revenues of India the expenses of visitations of the said bishops, and of the providing a suitable house for the residence of the Bishop of Calcutta (*c*), but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

(*a*) As to the existing salaries, see note on s. 80.

(*b*) Pensions, as distinguished from allowances, appear to be still paid under 4 Geo. IV, c. 71, s. 3, and 3 & 4 Will. IV, c. 85, s. 96, and not under 43 Vict. c. 3, s. 3.

(*c*) The statutory obligation to provide a house for the Bishop of Calcutta is exhausted, but it may have been construed as including an obligation to maintain his house.

Furlough rules. [34 & 35 Vict. c. 62.]

114. Her Majesty may make such rules as to the leave of absence of the several Indian bishops on furlough or medical certificate as seem to Her Majesty expedient.

Establishment of chaplains of Church of Scotland. [3 & 4 Will. IV, c. 85, s. 102.]

115.—(1) Two of the chaplains appointed in each of the presidencies of Bengal, Madras, and Bombay must always be ministers of the Church of Scotland, and are entitled to have from the revenues of India such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and are subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgements are subject to dissent, protest, and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Saving as to grants to Christians.

116. Nothing in this Digest prevents the Governor-General in Council from granting, with the sanction of the Secretary

of State in Council, to any sect, persuasion, or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship. [3 & 4 Will. IV, c. 85, s. 102.]

PART XI.

OFFENCES, PENALTIES, AND PROCEDURE.

117. If any person holding office under the Crown in India does any of the following things; that is to say,— Certain acts to be misdemeanours:

(1) If he oppresses any of Her Majesty's subjects (*a*) within his jurisdiction or in the exercise of his authority: Oppression. [10 Geo. III, c. 47, s. 4.]

(2) If (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys or wilfully omits, forbears, or neglects to execute any orders or instructions of the Secretary of State: Wilful disobedience. [33 Geo. III, c. 52, s. 65. 3 & 4 Will. IV, c. 85, s. 80.]

(3) If he is guilty of any wilful breach of the trust and duty of his office and employment: Breach of duty. [33 Geo. III, c. 52, s. 65. 3 & 4 Will. IV, c. 85, s. 80.]

(4) If, being the governor-general, or a governor, or a member of the council of the governor-general or of a governor, or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in or has any dealings or transactions by way of traffic or trade in any part of India (*b*) [otherwise than as a shareholder in any joint-stock company or trading corporation]: Trading. [33 Geo. III, c. 52, s. 137. 3 & 4 Will. IV, c. 85, s. 76.]

(5) If he accepts or receives for his own use, in the discharge of his office, any gift, gratuity, or reward, pecuniary or otherwise [except in accordance with rules made by the Secretary of State as to the receipt of presents], and except in the case of fees paid to barristers, physicians, surgeons, and chaplains in the way of their respective professions; Receiving presents. [13 Geo. III, c. 63, ss. 23, 24, 25. 33 Geo. III, c. 52, ss. 62, 64. 3 & 4 Will. IV, c. 85, s. 76.]

he is guilty of a misdemeanour.

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If a person is convicted of having accepted or received any such gift, gratuity, or reward, the court may order that the gift, gratuity, or reward, or any part thereof, be restored to the person who gave it, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct (*c*).

(*a*) The expression 'His Majesty's subjects' in the Act of 1770 (10 Geo. III, c. 47, s. 4) was used at a time when it was very doubtful how far the sovereignty of the British Crown extended over natives of India, at all events outside the presidency towns, and was possibly intended to be used in the narrower sense formerly attributed to the expression 'British subjects.' See note (*c*) on s. 63 above.

(*b*) The expression in the Act of 1793 (33 Geo. III, c. 52, s. 137) is 'within any of the provinces of India or other parts.'

(*c*) This section reproduces with as much exactness as seems practicable the several enactments noted in the margin. In many cases enactments dealing with the same offence use different language, and apply to different classes of persons. The provisions reproduced from 3 & 4 Will. IV, c. 85, cannot be altered by Indian legislation. See 24 & 25 Vict. c. 67, s. 22.

The words 'otherwise than as a shareholder in any joint-stock company or trading corporation,' and 'except in accordance with rules made by the Secretary of State as to the receipt of presents,' do not occur in the enactments reproduced, but represent the limitations placed in practice on the extremely general language of the enactments.

Similar prohibitions of trading or lending money are contained in enactments of the Indian legislatures. See, e.g., Act XV of 1848 (trading by officers of chartered courts); Act II of 1874, s. 10 (by administrator-general); Acts VII of 1878, s. 74, and XIX of 1881, s. 73 (by forest officers); Acts V of 1861, s. 10, XXIV of 1859, s. 19; Bombay Act VII of 1867, s. 11 (by police officers); Acts XI of 1876, s. 34, and V of 1879, s. 3 (by officers of presidency banks); Act XVIII of 1881, s. 155; Bombay Act V of 1879, s. 31; Madras Regulation I of 1803, s. 40; Madras Regulation II of 1803, s. 64; Bengal Regulation II of 1793, s. 18 (by revenue officers); Bengal Regulation XXXVIII of 1793, s. 2 (loans by civil servants).

As to the rules prohibiting the receipt of presents by governors of and servants of the Crown in British Colonies, see Todd, Parliamentary Government in the British Colonies, p. 153 (second edition).

Loans to native princes.

118.—(1) If any British subject, without the previous consent in writing of the Secretary of State in Council or of

the Governor-General in Council or of a local Government, by himself or another—

[37 Geo. III, c. 142 s. 28.]

(*a*) lends any money or other valuable thing to any native prince in India; or

(*b*) is concerned in lending money to, or raising or procuring money for, any such native prince, or becomes security for the repayment of any such money; or

(*c*) lends any money or other valuable thing to any other person for the purpose of being lent to any such native prince; or

(*d*) takes, holds, or is concerned in any bond, note, or other security granted by any such native prince for the repayment of any loan or money hereinbefore referred to,

he is guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held, or enjoyed, either directly or indirectly, for the use and benefit of any British subject, contrary to the intent of this section, is void (*a*).

(*a*) The enactment reproduced by this section was passed in 1797 to stop the scandals caused by the lending of money by European adventurers to native princes on exorbitant terms. See above, p. 73. The expression 'British subject,' as used in the Act of 1797, would doubtless be construed in its narrower sense, as not including natives of India.

Prosecution of offences in England.

[10 Geo. III, c. 47, s. 4. 13 Geo. III, c. 63, s. 39. 21 Geo. III, c. 70, s. 7.]

119.—(1) If any person holding office under the Crown in India commits any offence referred to in this Digest, or any other crime or offence, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried, and determined before Her Majesty's High Court of Justice, and be dealt with as if committed in the county of London.

(2) Every British subject is amenable to all courts of justice in Great Britain of competent jurisdiction to try offences committed in India for any offence committed within India and outside British India as if the offence had been committed within British India.

(3) Every prosecution in respect of any offence referred to in this section must be commenced within five years after

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the commission of the offence, or after the arrival in the United Kingdom of the person who committed the offence, whichever is later (*a*).

(*a*) This section is merely an imperfect attempt to reproduce several enactments of the eighteenth century which are still unrepealed, and which, though obsolete as respects procedure, may still be of importance with respect to jurisdiction. The words 'any other crime or offence,' in 13 Geo. III, c. 63, s. 4, are very wide, and perhaps ought to be construed subject to a limitation to offences of the same kind as those previously mentioned. Section 67 of 33 Geo. III, c. 52, has been repealed as to Indian courts by Act XI of 1872, but is still unrepealed as to courts in the United Kingdom.

The limitation under 21 Geo. III, c. 70, s. 7 (which applies only to proceedings against the governor-general or a member of his council), is five years after commission of offence or arrest in England. The limitation under 33 Geo. III, c. 52, s. 141, is six years after commission of offence. There is a three years' limitation under 33 Geo. III, c. 52, s. 162. But all these limitations are now affected by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

The enactments reproduced run as follows:—

'If any person whatsoever employed by or in the service of the said united Company, in any civil or military station, office, or capacity whatsoever in the East Indies, or deriving or claiming any power, authority, or jurisdiction by or from the said united Company, shall, after the passing of this Act, be guilty of oppressing any of His Majesty's subjects beyond the seas within their respective jurisdictions, or in the exercise of any such station, office, employment, power, or authority derived or claimed by, from, or under the said united Company, or shall be guilty of any other crime or offence, such oppressions, crimes, and offences shall and may be inquired of, heard, and determined in His Majesty's Court of King's Bench in England; and such punishments shall be inflicted on such offenders as are usually inflicted for offences of the like nature committed in that part of Great Britain called England; and . . . the same and all other offences committed against this Act may be alleged to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (10 Geo. III, c. 47, s. 4).

'No prosecution or suit shall be carried on against the said governor-general, or any member of the council, before any court in Great Britain (the High Court of Parliament only excepted), unless the same shall be commenced within five years after the offence committed, or within five years after his arrival in England' (21 Geo. III, c. 70, s. 7).

'All His Majesty's subjects, as well servants of the said united Company as others, shall be and are hereby declared to be amenable to all courts of justice, both in India and Great Britain, of

competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanours, offences, and crimes whatever, by them or any of them done or to be done or committed in any of the lands or territories of any native prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India' (33 Geo. III, c. 52, s. 67).

'All penalties, forfeitures, seizures, causes of seizure, crimes, misdemeanours, and other offences, which shall arise or be incurred or made under or shall be committed against this Act, shall be sued for, prosecuted, examined, recovered, and adjudged in any of His Majesty's Courts of Record at Westminster, or in the Supreme Court of Judicature at Fort William in Bengal, or in one of the mayors' courts at Madras or Bombay respectively, in manner following; that is to say, all such pecuniary penalties, and all forfeitures of ships, vessels, merchandise and goods, shall and may be sued for, condemned, and recovered by action, bill, suit, or information, wherein no essoin, protection, wager of law, or more than one imparlance, shall be granted or allowed; and all such seizures, whether of any person or of any ships, vessels, merchandise and goods, and all causes of such seizures, shall be cognizable in such actions, suits, or prosecutions as shall bring into question or relate to the lawfulness or regularity of any such seizure; and all such offences as by this Act are not made punishable by pecuniary penalties or by any forfeiture of goods, but by fine or imprisonment, or both, or are hereby created, without providing any particular punishment, shall be prosecuted by indictment or information as misdemeanours, for breach thereof, and shall be punished by fine or imprisonment, or both, at the discretion of the court in which such prosecution shall, by virtue of this Act, be begun and carried on; and if such prosecution for a misdemeanour shall be in any of the said courts in the East Indies, and the person or persons prosecuted shall be there convicted, it shall be lawful for such court to order, as part or for the whole of the punishment, any such person or persons to be sent and conveyed to Great Britain' (33 Geo. III, c. 52, s. 140).

'Whenever any action, bill, suit, information, or indictment shall be brought or prosecuted in any of His Majesty's Courts of Record at Westminster, for any offence against this Act, whether for a penalty, forfeiture, or misdemeanour, the offence shall be laid or alleged to have been committed in the city of London or county of Middlesex, at the option of the informer or prosecutor; and all actions, bills, suits, informations, and indictments for any offence or offences against this Act, whether filed, brought, commenced, or prosecuted for a penalty or forfeiture, or for a misdemeanour, in any of His Majesty's Courts of Record at Westminster, or in the said Supreme Court, or any such mayor's court as aforesaid,

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shall be brought and prosecuted within six years next after the offence shall be committed, and a capias shall issue in the first process, and in the case of an offence hereby made punishable by any penalty or forfeiture, such capias shall specify the sum of the penalty or forfeiture sued for; and the person or persons sued or prosecuted for such penalty shall, on such capias, give to the person or persons to whom such capias shall be directed, sufficient bail or security, by natural-born subjects or denizens, for appearing in the court out of which such capias shall issue, at the day or return of such writ, to answer such suit or prosecution, and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the same court, to answer and pay all the forfeitures and penalties sued for, if he, she, or they shall be convicted of such offence or offences, or to yield his, her, or their body or bodies to prison; but if the prosecution shall be for any offence or offences against this Act punishable only as a misdemeanour, then the person or persons against whom such capias shall issue, being thereupon arrested, shall be imprisoned and bailable according to law as in other cases of misdemeanour' (33 Geo. III, c. 52, s. 141).

'All suits and prosecutions for anything done under or by virtue of this Act shall be commenced within the space of three years after the cause of complaint shall have arisen, or, being done in Great Britain, in the absence of any person beyond sea aggrieved thereby, then within the space of three years next after the return of such person to Great Britain' (33 Geo. III, c. 52, s. 162).

. . . 'If any governor-general, president, or governor or council of any of the said Company's principal or other settlements in India, or the chief justice, or any of the judges of the said Supreme Court of Judicature to be by the said new charter established, or of any other court in any of the said united Company's settlements, or any other person or persons who now are, or heretofore have been, employed by or in the service of the said united Company in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed, any power or authority or jurisdiction by or from the said united Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act, or shall have been or shall be guilty of any crime, misdemeanour, or offence committed against any of His Majesty's subjects, or any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences, and misdemeanours may be respectively inquired of, heard, tried, and determined in His Majesty's Court of King's Bench, and all such persons so offending, and not having been before tried for the same offence in India, shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said court shall think fit; and, moreover, shall be liable, at the discretion of the said court, to be adjudged to be incapable of serving the said united Company

in any office, civil or military; and all and every such crimes, offences, and misdemeanours as aforesaid may be alleged to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (13 Geo. III, c. 63, s. 39).

Provision as to persons suspected of dangerous correspondence. [33 Geo. III, c. 52, ss. 45, 46.]

120.—(1) The Governor-General in Council and the Governors in Council of Madras and Bombay respectively may issue warrants for securing and detaining in custody any person suspected of carrying on mediately or immediately any illicit correspondence dangerous to the peace or safety of any part of British India with any prince, rajah, zemindar, or other person having authority in India, or with the commander, governor, or president of any factory or settlement established in India by an European power, or any correspondence contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or Governor in Council.

(2) If on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council there appear reasonable grounds for the charge, the governor-general or governor may commit the person suspected or accused to safe custody, and must within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge or accusation on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence must be examined and cross-examined on oath in the presence of the person accused, and their depositions and examination must be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge or accusation and for continuing the confinement, the person accused is to remain in custody until he is brought to trial in India or sent to England for that purpose.

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(6) All such examinations and proceedings or attested copies thereof under the seal of the high court must be sent to the Secretary of State as soon as may be in order to their being produced in evidence on the trial of the person accused in the event of his being sent for trial to England.

(7) If any such person is to be sent to England the governor-general or governor, as the case may be, must cause him to be sent to England at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he must be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section are to be deemed and received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses (*a*).

(*a*) The provisions of the Act of 1793, reproduced by this section, have never been repealed. But no record has been found of any case in which they have been put into operation, and the cases which they were mainly designed to meet could probably be dealt with under other enactments. Powers of arrest and imprisonment for political offences are given by Bengal Regulation III of 1818, Madras Regulation II of 1819, Bombay Regulation XXV of 1827, Act XXXIV of 1850 (the State Prisoners Act, 1850), and Act III of 1858 (the State Prisoners Act, 1858). See *In the matter of Ameer Khan*, 6 Bengal Law Rep. 392. The Bombay Regulation was used in 1886 for the arrest of Dhuleep Singh at Aden, and has recently (in 1897) been put in force in connexion with seditious proceedings at Poona.

PART XII.

SUPPLEMENTAL.

Savings.

Saving as to certain rights and powers. [3 & 4 Will. IV, c. 85, s. 51. 24 & 25 Vict. c. 67, s. 52.]

121.—(1) Nothing in this Digest derogates from or interferes with the rights vested in Her Majesty, or the powers vested in the Secretary of State in Council, in relation to the Government of British India, by any law in force at the passing of the Government of India Act, 1850.

(2) Nothing in this Digest affects the power of Parliament

to control the proceedings of the Governor-General in Council or of any local Government, or to repeal or alter any law or regulation made by any authority in British India, or to legislate for British India and the inhabitants thereof (*a*).

(*a*) These savings, reproduced from the Acts of 1833 and 1861, are important as showing that the parliamentary enactments relating to India were never intended to be and cannot be construed as a complete code of the powers and rights exercisable by or with reference to the Government of India.

Treaties, contracts, and liabilities of East India Company. [21 & 22 Vict. c. 106, s. 67.]

122.—(1) All treaties made by the East India Company are, so far as they are in force, binding on Her Majesty (*a*).

(2) All contracts made and liabilities incurred by the East India Company may, so far as they are still outstanding, be enforced by and against the Secretary of State in Council.

(*a*) A treaty, unless confirmed by legislation, cannot affect private rights of British subjects in times of peace. *Walker* v. *Baird*, [1892] A. C. 492, 496.

Orders of East India Company. [21 & 22 Vict. c. 106, s. 59.]

123. All orders, regulations, and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force, to be deemed to be orders, regulations, and directions made by the Secretary of State under the Government of India Act, 1858.

Definitions.

Definitions.

124. In this Digest the following expressions, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

(1) The expression 'British India' means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India (*a*).

(2) The expression 'India' means British India together with any territories of any native prince or chief under the

suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India (*a*).

(3) The expression 'province' means any part of British India the executive government of which is administered by a Governor in Council, governor, lieutenant-governor, or chief commissioner (*b*).

(4) The expression 'local Government' means a Governor in Council, lieutenant-governor, or chief commissioner (*c*).

(5) The expression 'high court' means a court established for some part of British India by Her Majesty's letters patent (*d*).

(6) The expression 'Civil Service of India' means the service so designated in the rules now in force.

(7) The expression 'office' includes place and employment.

52 & 53 Vict. c. 63. The Interpretation Act, 1889, applies to the construction of this Digest (*e*).

(*a*) The definitions of 'British India' and 'India' follow those adopted in the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and in the Indian General Clauses Act, 1897 (X of 1897, s. 3 (7), (27)).

British India corresponds to the territories which were in the Act of 1858 described as 'the territories in the possession of or under the government of the East India Company,' and which were then held by the Company in trust for the Crown.

Aden is part of British India, and is included in the Bombay presidency. See the Aden Laws Regulation, 1891 (II of 1891).

India, as distinguished from British India, includes also the territories of Native States, which used to be described in Acts of Parliament as 'the dominions of the princes and States of India in alliance with Her Majesty,' or in similar terms. See, e.g., 24 & 25 Vict. c. 67, s. 22; 28 & 29 Vict. c. 15, s. 3; 28 & 29 Vict. c. 17, s. 1; 53 & 54 Vict. c. 37, s. 15.

The expression 'suzerainty' is substituted by the Interpretation Act for the older expression 'alliance,' as indicating more accurately the relation between the rulers of these States and the British Crown as the paramount authority throughout India. It is a term which is perhaps incapable of precise definition, but which is usefully employed to indicate the political authority exercised by one State over another, and approximating more or less closely to complete sovereignty. See Holland's Jurisprudence, ed. 7, pp. 45, 347, and below, Chapter vii.

The territories of the Native States are not part of the dominions of the Queen, but their subjects are, for international purposes, in the same position as British subjects. For instance, under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), where an order made in pursuance of the Act extends to persons enjoying Her Majesty's protection, that expression is to be construed as including all subjects of the several princes and States in India. And it is possible that a subject of a Native State would not be held to be an 'alien' within the meaning of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), so as to be capable of obtaining a certificate of naturalization under that Act.

The expression 'prince or chief' seems wide enough to include the ruler or head-man, by whatever name called, of any petty tribe or clan or group, however rudimentary may be its political organization. But of course political authority may be so widely distributed among head-men or elders, or members of the tribe or group, as to make the task of finding an individual or collective 'sovereign' very difficult. This difficulty is to some extent met by s. 2 of the Imperial Foreign Jurisdiction Act (53 & 54 Vict. c. 37.)

It has sometimes been found difficult to determine whether a particular territory ought to be treated as part of British India, or of India in the wider sense, and questions have arisen as to the status of such territories as Kathiawar, Cooch Behar, and the tributary mahals of Orissa. See *Empress* v. *Keshub Mahajun*, (1882) I. L. R. 8 Cal. 985, and *Re Bichitramund*, (1889) I. L. R. 16 Cal. 667.

India in the wider sense would not include French or Portuguese territory.

The expression 'British India,' as defined above, includes the land down to low-water mark, and would ordinarily include the territorial waters of British India, though not the high seas beyond (*R.* v. *Edmonstone*, (1879) 7 Bom. Cr. Ca. 109). In 1871 the Bombay High Court held that the provisions of the Indian Penal Code applied to offences committed within a marine league of the shore of British India (*R.* v. *Kastya Rama*, 8 Bom. Cr. Ca. 63). But this decision is now affected by the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), as to which see the note on s. 101.

For fiscal and protective purposes the Indian Legislature has made laws for Indian waters. See, e. g., the Transport of Salt Act, 1879 (XVI of 1879), and the Obstructions in Fairways Act, 1881 (XVI of 1881).

The settlements of Prince of Wales' Island, Singapore, and Malacca were, in pursuance of the Straits Settlements Act, 1886 (29 & 30 Vict. c. 115, s. 1), removed from British India and placed under the Colonial Office.

(*b*) 'Province' is defined in the Indian General Clauses Act (X of 1897, s. 3 (43)) as meaning the territories for the time being administered by any local Government.

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(*c*) 'Local Government' is defined in the Indian General Clauses Act (X of 1897, s. 3 (29)) as meaning 'the person authorized by law to administer executive government in the part of British India in which the Act or regulation containing the expression operates,' and as including a chief commissioner.

There are at present eleven local Governments in British India, namely, the Governor of Madras in Council; the Governor of Bombay in Council; the Lieutenant-Governor of Bengal; the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh; the Lieutenant-Governor of the Punjab; the Lieutenant-Governor of Burma; the Chief Commissioner of the Central Provinces; the Chief Commissioner of Assam; the Chief Commissioner of British Beloochistan; the Chief Commissioner of Ajmere; and the Chief Commissioner of Coorg. Under Act V of 1868 the powers of a local Government for certain purposes may be delegated to the commissioner in Sindh.

(*d*) This definition only includes the chartered high courts at Calcutta, Madras, Bombay, and Allahabad. The definition in the Indian General Clauses Act (X of 1897, s. 3 (24)) is wider, and includes the various judicial commissioners and the chief court of the Punjab.

(*e*) In a Digest of this kind it seems convenient to adopt the same general rules of construction as are applied to recent Acts of Parliament. The application of the Interpretation Act makes the definitions of 'British India' and 'India,' strictly speaking, superfluous, but they are set out on account of their importance.

SUPPLEMENTAL NOTES.

1. *Omissions from Digest.*

The following enactments have not been reproduced in this Digest, on the ground of either never having come into operation, or having ceased through change of circumstances to be in operation:—

The power given by 13 Geo. III, c. 63, s. 9, for the Governor-General in Council to suspend the Government of Madras or Bombay in case of disobedience.

The express grant by 21 Geo. III, c. 70, s. 17, of jurisdiction over all inhabitants of Calcutta.

The saving in 21 Geo. III, c. 70, s. 18, for the rights of fathers of Hindu and Mahomedan families and rules of caste.

The procedure under 24 Geo. III, sess. 2, c. 25, ss. 66 and 77, for constituting a special court for the trial of Indian offenders. This machinery has never been put into force.

The provisions in 33 Geo. III, c. 52, s. 41, as to the duty of local Governments in the case of conflict between the orders of the

Governor-General in Council and the orders of the Directors of the East India Company.

The provision in 33 Geo. III, c. 52, s. 70, as to forfeiture of office after absence for five years.

The requirement in 37 Geo. III, c. 142, to send to the Board for Affairs of India the forms and rules made in India as to process in the recorders' courts.

The enactments in 53 Geo. III, c. 155, ss. 42, 43, as to the control of the India Board over colleges and seminaries in India, and as to the provision to be made for public education in India.

The provision in 53 Geo. III, c. 155, ss. 85, 86, as to the precedence of civil servants.

The provisions in 6 Geo. IV, c. 85, s. 5, as to the payments to be made in the case of judges and bishops.

The provision in 3 & 4 Will. IV, c. 85, for dividing the Presidency of Fort William into two presidencies.

The provision in section 56 of the same Act for the government of Bengal by a Governor in Council.

The express power given by section 86 of the same Act to hold land in India.

2. *Powers of Governor-General to grant Military Commissions.*

Questions have sometimes been raised as to the power of the governor-general, either alone or in council, to grant military commissions, with command over officers and men of the regular forces, and as to the effect of commissions so granted, and as the answer to the question depends on a series of enactments and other documents, it seems worth while to state it somewhat fully.

Before the passing of the Government of India Act, 1858 (21 & 22 Vict. c. 106), the Governor-General in Council granted commissions to officers of the troops of the East India Company.

The power to grant such commissions may be presumed to have been derived from the charters and Acts relating to the East India Company.

According to Sir George Chesney (Indian Polity, 3rd edition, ch. xii), the first establishment of the Company's Indian army may be considered to date from 1748, when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement, during the course of the war which had broken out four years previously between France and England. At the same time a European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the crimps. An officer (Major Lawrence) was appointed by a commission from the Company to command their forces in India.

In 1754 an Act (27 Geo. II, c. 9) was passed for punishing mutiny and desertion of officers and men in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East

CH. III. Indies, and at the island of St. Helena. This Act recites that for the safety and protection of their settlements, and for the better carrying on of their trade, the East India Company, at their own costs and charges, do maintain and keep a military force for the garrison and defence of their settlements, factories, and places, and that it is requisite for the retaining of such forces in their duty that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert the Company's service, shall be brought to a more exemplary and speedy punishment than the usual forms of law allow. The Act then proceeds to make officers and soldiers of the Company's forces subject to punishment by court-martial for military offences, and authorizes the grant of a commission or warrant under the King's Royal Sign Manual, by virtue of which the Court of Directors of the Company may authorize their president and council to appoint courts-martial.

The Act does not, in so many words, give the Company power to grant commissions; and Brougham, in the course of his argument in the case of *Bradley* v. *Arthur* (2 State Trials, N.S. p. 190), comments on the avoidance of the word 'commission' in the statute. The expression used is 'that if any person *being mustered or in pay as an officer*, or who is or shall be enlisted, or in the Company's pay as a soldier,' does so and so, he is to be tried by court-martial.

The statement that the word 'commission' does not appear in the statute is not strictly accurate, for it is used in section 5; but there is nothing to show that the commissions there referred to are commissions in the army of the East India Company.

Nor does Brougham appear to have been accurate in saying that the Act was a temporary Act annually renewed. It appears to have been a permanent Act, but ceased to have any operation after the abolition of the East India Company's army, and was formally repealed by the Statute Law Revision Act of 1867.

There appear to have been always doubts as to the exact status conferred by military commissions in the Company's army. In 1796 Lord Cornwallis was appointed commander-in-chief as well as Governor-General of India, and was thus invested with the supreme military as well as the supreme authority. One of the objects with which this combination of powers was conferred on him was to enable him to remove or mitigate the jealousies and friction between the Queen's officers and the Company's officers, and with this object he granted, in 1788 or 1789, brevet commissions in the royal service to all the Company's officers, with dates corresponding to their substantive commissions (Cornwallis Correspondence, 2nd edition, vol. ii. p. 428; Chesney, Indian Polity, ch. xii). This arrangement, according to Sir G. Chesney, was continued until the abolition of the Company's government in 1858, brevet commissions being granted under powers delegated for that purpose by the Crown to the Commander-in-Chief in India. Without such brevet commissions it is at least doubtful whether

officers of the Company's forces could have exercised any command over officers or soldiers of the regular forces.

By the Government of India Act, 1858 (21 & 22 Vict. c. 106), the government of India was transferred to the Crown. But by s. 30 of that Act it was provided that all appointments to offices, commands, and employments in India, and all promotions which by law or under regulations, usage, or custom were then made by any authority in India, should continue to be made in India by the like authority and subject to the qualifications, conditions, and restrictions then affecting such appointments respectively.

The Act 23 & 24 Vict. c. 100 (1860), after reciting that 'it is not expedient that a separate European force should be continued for the local service of Her Majesty in India,' enacted that 'so much of the Act of Parliament of the twenty-second and twenty-third of Her Majesty, chapter twenty-seven, intituled "An Act to repeal the thirty-first section of sixteen and seventeen Victoria, chapter ninety-five, and to alter the limit of the number of European troops to be maintained for local service in India," and of any former Act or Acts of Parliament as renders it lawful for the Secretary of State in Council from time to time to give such directions as he may think fit for raising such number of European forces as he may judge necessary for the Indian Army of Her Majesty, is hereby repealed.' This Act received the Royal Assent on August 20, 1860.

Sir Charles Wood, when Secretary of State for India, by his Dispatch, No. 461, dated December 16, 1862, informed the governor-general that local commissions should in all practicable cases be bestowed by the field-marshal commanding-in-chief on the recommendation of the Government of India preferred through the Secretary of State, but that in any case commissions which the Government of India might consider it necessary to bestow without previous reference should be subject to the confirmation of the Crown applied for through the same channel.

Sir Charles Wood, by his Dispatch, No. 351, dated November 16, 1864, informed the Government of India that, in view of royal commissions being granted to all officers of Her Majesty's Indian forces and staff corps, the issue of commissions either by local Governments or by the commander-in-chief was unnecessary.

The Indian Volunteers Act, 1869 (XX of 1869), which is amended by Act X of 1896, provides for the formation and dissolution and for the good order and discipline of volunteer corps in India. The Act is silent as to the grant of commissions to volunteer officers, but provides (s. 14) that the commissions are to cease on retirement or dismissal. In practice, however, commissions to officers of volunteers under this Act are signed either by the governor-general or by the Governor-General in Council. Members of a corps of volunteers under the Indian Act are, on being called out for duty, subject, by virtue of s. 8 of that Act, to military law under the Army Act, and by virtue of s. 117 of

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The regular forces are under the command of the Crown, and the military rank and military powers of command of officers of the regular forces depend solely on commissions from the Crown, issued in accordance with the provisions of 25 & 26 Vict. c. 4.

The commission of a commander-in-chief usually authorizes him to grant commissions until the pleasure of the Crown is signified, and sometimes gives him absolute powers to grant commissions. Commissions so granted are granted by a military and not by a civil authority, and by virtue of express authority from the Queen. The commander-in-chief in India is not at present authorized by his commission to sign commissions on behalf of the Queen.

Before 1871 commissions to officers of the auxiliary forces in the United Kingdom were granted by the lieutenants of counties in England and Scotland and by the Lord Lieutenant in Ireland. The power to grant these commissions was given by statute, and the rank and powers of command of the commissioned officers were also regulated by statute (see, e.g., 26 & 27 Vict. c. 65, s. 5). Without such a statutory provision they would have had no command over the regular forces. But by s. 6 of the Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), it was enacted that all officers in the militia, yeomanry, and volunteers of England, Scotland, and Ireland should hold commissions from Her Majesty, to be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued according to any law or custom for the time being in force. Accordingly all such commissions are now granted directly or indirectly by the Crown.

The power of granting military commissions may be delegated by the Crown, but the power must apparently be given in express terms (see *Bradley* v. *Arthur*, 2 State Trials, N. S. 171), and it has been considered doubtful whether it could be given to a civilian (see Clode, Military Forces of the Crown, vol. ii. p. 72, and *Bradley* v. *Arthur*, 2 State Trials, N. S. 183, 196, 202–203). Certainly in India, down to 1859, all commissions giving command over the regular forces were given by the military authority—the commander-in-chief, and not the governor-general. However, Sir Bartle Frere, when High Commissioner for South Africa, was empowered by letters patent (dated October 10, 1878) to appoint any officer of the regular troops serving in South Africa to local and temporary rank and command therein, and by subsequent letters patent (dated March 22, 1879) to appoint any officer of the local forces serving in South Africa to local and temporary rank and command in the regular army. But this was a special appointment in time of war, and outside the colonial limits. 'Local forces' may have meant forces within ss. 175 (4) and 176 (3) of the Army Act, or colonial forces within s. 177 of the Army Act, or both. As to the powers ordinarily exercisable by colonial

governors in military matters, see Todd, Parliamentary Government in the British Colonies (second edition), p. 41.

The existing Army Act (44 & 45 Vict. c. 58) does not confer on the Governor-General of India any power to grant commissions or recognize any such power. Indeed, the Act treats him throughout as a civil and not a military officer (see, e.g., ss. 54, 62, 65, 94, 130, 134, 169). If his commission were to confer on him the powers of a commander-in-chief, he might, no doubt, by virtue of those powers, grant military commissions such as were granted by Lord Cornwallis in his capacity of commander-in-chief; but otherwise he would appear not to have, by virtue of his office, power to grant any military command over officers of the regular forces.

In 1866 a provision was inserted in s. 52 of the Mutiny Act to the effect that, notwithstanding anything in the Act 23 & 24 Vict. c. 100, any person authorized in that behalf in India might enlist and attest, within the local limits of his authority, any person desirous of enlisting in Her Majesty's Indian forces. This provision was re-enacted by s. 52 of each successive annual Mutiny Act, and was eventually reproduced by s. 180 (1) (*h*) of the existing Army Act, which provides that persons may be enlisted and attested in India for medical service or for other special service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorized by the Governor-General of India. Enlistment is the process for taking men, not officers, into the army, and the section says nothing about the grant of commissions.

Section 71 of the Army Act enacts that 'for the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, and as to the mode in which such command is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.' This provision was first enacted in 1881, when the old enactments as to the rank and command of officers of the military and other auxiliary forces were repealed, and its object was to provide for officers of the regular forces exercising command over officers of the auxiliary forces, and vice versa.

Under these circumstances it would appear that any forms of appointment, whether described as commissions or otherwise, granted by the governor-general or by the Governor-General in Council, could not confer the status and powers of command conferred by commissions under the signature of the Queen. It will be observed that no express power to grant such commissions is conferred on the governor-general by the existing form of his warrant of appointment, which is printed below, p. 574.

SCHEDULES.

FIRST SCHEDULE.

OFFICIAL SALARIES[1].

Session and Chapter.	*Officer.*	*Maximum Salary.*
3 & 4 Will. IV, c. 85, s. 76.	Viceroy and Governor-General.	2,40,000 Sicca Rs. = Rs. 2,56,000.
3 & 4 Will. IV, c. 85, s. 76.	Governors of Madras and Bombay.	1,20,000 Sicca Rs. = Rs. 1,28,000.
16 & 17 Vict. c. 95, s. 35.	Commander-in-Chief.	Rs. 1,00,000.
16 & 17 Vict. c. 95, s. 35.	Lieutenant-Governor.	Rs. 1,00,000.
3 & 4 Will. IV, c. 85, s. 76.	Members of Governor-General's Council.	96,000 Sicca Rs. = Rs. 1,02,400.
3 & 4 Will. IV, c. 85, s. 76.	Member of Council, Madras and Bombay.	60,000 Sicca Rs. = Rs. 64,000.

SECOND SCHEDULE.

OFFICES RESERVED TO THE CIVIL SERVICE OF INDIA.

Secretaries, junior secretaries, and under secretaries to the several Governments in India, except the secretaries, junior secretaries, and under secretaries in the Military, Marine, and Public Works Departments.

Accountant-general.

Civil auditor.

Sub-treasurer.

[1] See s. 80 of Digest.

Judicial.

1. Civil and sessions judges, or chief judicial officers of districts in the provinces known as Regulation Provinces.
2. Additional and assistant judges in the said provinces.
3. Magistrates or chief magisterial officers of districts in the said provinces.
4. Joint magistrates in the said provinces.
5. Assistant magistrates, or assistants to magistrates in the said provinces.

Revenue.

1. Members of the Board of Revenue in the presidencies of Bengal and Madras.
2. Secretaries to the said Boards of Revenue.
3. Commissioners of revenue, or chief revenue officers of divisions, in the provinces known as Regulation Provinces.
4. Collectors of revenue, or chief revenue officers of districts, in the said provinces.
5. Deputy or subordinate collectors where combined with the office of joint magistrate in the said provinces.
6. Assistant collectors or assistants to collectors in the said provinces.
7. Salt agents.
8. Controller of salt chowkies.
9. Commissioners of customs, salt, and opium.
10. Opium agents[1].

[1] See s. 93 of Digest. This is the schedule appended to the Act of 1861 (24 & 25 Vict. c. 54), but it has now become in some respects obsolete. For instance, the expression 'Regulation Provinces' is only intelligible by reference to a past state of things. It means practically the presidencies of Madras and Bombay, and the lieutenant-governorships of Bengal and the North-Western Provinces.

TABLE OF COMPARISON BETWEEN STATUTORY ENACTMENTS AND DIGEST.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
10Geo.III, c. 47, s, 2.	**The East India Company Act, 1770.** Persons in service of Company transporting warlike stores.	Not reproduced. Appears to be virtually repealed by 33 Geo. III, c. 52, s. 146.
s. 3.	Balloting by Court of Directors of East India Company.	Not reproduced. Repealed as to U.K. by S.L.R. Act[1], 1887.
s. 4.	Trial in England of Company's servants committing offences in India.	Extended by 13 Geo. III, c. 63, s. 39, to all offenders. Reproduced by ss. 117 (1), 119.
s. 5.	In action against East India Company, defendant may plead the general issue.	Not reproduced. Repealed as to U.K. by 56 & 57 Vict. c. 61 (Public Authorities Protection Act, 1893).
s. 6.	The Act to be a public Act.	Not reproduced. Repealed as to U.K. by S.L.R. Act, 1887.
s. 7.	In action against East India Company in England, defendant to give notice of substance of defence.	Not reproduced. Repealed as to U.K. by 56 & 57 Vict. c. 61.
13Geo.III, c. 63.	**The East India Company Act, 1772.**	
Preamble.	. . . . .	Not reproduced. Repealed as to U.K. by S.L.R. Act, 1887.
s. 1.	Number of directors of East India Company.	
s. 2.	. . . . .	

[1] S.L.R. Act = Statute Law Revision Act. Acts under this name are periodically passed for the purpose of removing from the Statute Book enactments which have been virtually repealed or have otherwise ceased to be in force as law.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13Geo.III, c. 63, ss. 3-5.	Qualification for votes of proprietors of East India Company for election of directors, &c.	Not reproduced. Repealed as to U. K. by S. L. R. Act, 1887.
s. 6.	Oath to be taken by proprietors of East India Company on election of directors, &c.	
s. 7.	Government of Bengal vested in governor-general and four councillors.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 39.
s. 8.	Difference of opinion in governor-general's council.	Reproduced by s. 44 (1).
s. 9.	President and Council of Madras, Bombay, and Bencoolen—	Repealed in part, S.L.R. Act, 1892.
	not to make war or treaty without orders of Governor-General in Council or East India Company.	Reproduced by s. 49 (2). Bencoolen has been given to the Dutch.
	liable to suspension if they disobey.	Modified by 33 Geo. III, c. 52, s. 43. The power for the Governor-General in Council to suspend a local Government in case of disobedience has been omitted as having been made unnecessary by change of circumstances.
	to obey orders of Governor-General in Council.	Reproduced by s. 49 (1).
	to keep Governor-General in Council informed of their proceedings.	Repealed by S. L. R. Act, 1892.
	Governor-General in Council—	
	to obey orders of East India Company.	Reproduced by s. 36 (2).
	to correspond with East India Company.	Reproduced by s. 17.
	Court of Directors to send to Treasury copies of correspondence relating to revenues.	Repealed by S. L. R. Act, 1892.
s. 10.	Appointment of first governor-general and members of his council.	Not reproduced. Spent. Repealed in part, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13Geo.III, c. 63, s. 10 (*continued*).	Appointment and removal of second governor-general and members of his council.	Not reproduced. Spent. Repealed in part, S.L.R. Act, 1892.
s. 11.	Provisions of section 10, when to take effect.	Spent. Repealed as to U.K. by S.L.R. Act, 1887.
s. 12.	Saving of power to make appointments.	Repealed, S.L.R. Act, 1892.
ss. 13, 14.	Constitution, powers, and jurisdiction of Supreme Court, Calcutta.	Reproduced by s. 101. The supreme courts were abolished, and their powers and jurisdiction vested in the high courts, by 24 & 25 Vict. c. 104, ss. 8, 9. S. 101 saves these powers and this jurisdiction.
s. 15.	Offences by governor-general and members of his council not triable by Supreme Court, Calcutta.	Reproduced by s. 105 (*c*)
s. 16.	Jurisdiction of Supreme Court, Calcutta, as to contracts.	Repealed by Indian Act XIV of 1870, and S.L.R. Act, 1892.
s. 17.	Governor-general, members of his council, and judges of Supreme Court not to be arrested or imprisoned by that Court.	Reproduced by s. 105 (1) (*b*), and (2).
s. 18.	Appeal to His Majesty in Council.	Repealed, S.L.R. Act, 1892.
s. 19.	Charter of mayor's court, Calcutta.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 20–22.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887.
s. 23.	Governor-general, his council, and judges of Supreme Court, Calcutta, not to receive gifts.	Reproduced by s. 119 (5). The words as to a promise of a gift are omitted. S. 119 (5), following 3 & 4 Will. IV, c. 85, s. 76, is limited to the acceptance of gifts by an official in the discharge of his office.
s. 24.	No official to receive gift from native.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13 Geo. III, c. 63, s. 25.	Exception as to fees of barristers, &c.	Reproduced by s. 117 (5).
ss. 26–29.	. . . . .	Repealed, 24 Geo. III, sess. 2, c. 25, s. 47, and 33 Geo. III, c. 52, s. 146.
ss. 30, 31.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
s. 32.	. . . . .	Repealed, 24 Geo. III, sess. 2, c. 25, s. 47, and 33 Geo. III, c. 52, s. 146.
s. 33.	Power of Indian courts to punish East India Company's servants for breach of trust, &c.	Not reproduced. Repealed, Indian Act XIV of 1870.
ss. 34, 35.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
s. 36.	Power of Governor-General in Council to make laws.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 37.	Power of Crown to disallow such laws.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 21.
s. 38.	Governor-general, members of his council, and judges of Supreme Court to be justices of the peace.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 39.	Trial of offences in England.	Reproduced by s. 119.
ss. 40, 41.	Procedure for obtaining evidence in India for criminal proceedings in the high court in England.	Left outstanding as belonging to the law of evidence.
s. 42.	Procedure for obtaining evidence in India for proceedings in Parliament against Indian offenders.	
s. 43.	Proceedings in Parliament against Indian offenders not to be discontinued by prorogation or dissolution of Parliament.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13Geo.III, c. 63, s. 44.	Procedure for obtaining evidence in India for civil proceedings in the high court in England.	Left outstanding as belonging to the law of evidence.
s. 45.	Depositions in capital cases not allowed as evidence, except in proceedings in Parliament.	
s. 46.	Saving for privileges of East India Company.	Repealed, S. L. R. Act, 1892.
s. 47.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
	The East India Company Act, 1780.	
21Geo.III, c. 70, s. 1.	Governor-general and his council exempt from jurisdiction of Supreme Court, Calcutta, for official acts.	Reproduced by s. 105 (*a*).
ss. 2–4.	Written order by Governor-General in Council a justification for any act in any court in India.	Reproduced by s. 106.
s. 5.	Procedure in case of oppression, &c., by governor-general or his council.	Reproduced by s. 107 (1) and (2).
s. 6.	Copies and depositions admissible in evidence.	Reproduced by s. 107 (3).
s. 7.	Limitation of prosecutions and suits against governor-general and his council.	Reproduced by s. 119 (3). The provision as to limitation of civil suits, and the exception as to Parliament, have not been expressly reproduced.
s. 8.	Supreme Court not to have jurisdiction in matters concerning the revenue.	Reproduced by s. 101 (3).
ss. 9, 10.	Exemption of certain classes of persons from jurisdiction of Supreme Court.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21Geo.III, c. 70, ss. 11–16.	Registration of native servants of East India Company.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
s. 17.	Jurisdiction of Supreme Court, Calcutta. Proviso as to native laws and usages.	Not reproduced. Saved by s. 101 (1). This section is reproduced by s. 108 so far as it appears to represent existing law. The express grant of jurisdiction over all inhabitants of Calcutta is omitted as no longer necessary.
s. 18.	Rights of fathers of Hindu and Mahomedan families, and rules of caste, preserved.	Omitted as unnecessary. May be, and has been to some extent, modified or superseded by Indian legislation.
ss. 19, 20.	Power for Supreme Court, Calcutta, to make rules as to process.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 21, 22.	Judicial powers of Governor-General in Council.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
s. 23.	Power of Governor-General in Council to frame regulations for provincial courts and councils.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
s. 24.	No action for acts done by, or by order of, judicial officers.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 25, 26.	Notice to judicial officer before prosecuting him.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 27, 28.	. . . . .	Repealed, S.L.R. Act, 1872.
24Geo.III, sess.2,c.25, ss. 1–63.	**The East India Company Act, 1784.**	Repealed, S.L.R. Act, 1872.
ss. 64, 65.	Procedure by information against British subjects guilty of extortion in East India.	Special procedure not reproduced. As to substance, see s. 119.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24Geo.III, sess.2, c.25, ss. 66–77.	Prosecution of Indian offenders in Parliament.	Not reproduced. These sections contain an elaborate procedure for constituting a special court for the trial of Indian offenders. It was to consist of three judges, four peers, and six members of the House of Commons. See Mill, British India, iv. 407 seq. The machinery has never been put in force, and the whole of this set of provisions is practically obsolete.
ss. 78–82.	Evidence and limitation of proceedings in information under Act.	Not reproduced. Fall with foregoing provisions.
s. 83.	Saving for claims as to territorial acquisitions.	Not reproduced. Made unnecessary by transfer of government to the Crown.
ss. 84, 85.	Commencement of Act . . . Act to be public Act.	Repealed, S.L.R. Act, 1887.
26Geo.III, c. 57,	**The East India Company Act, 1786.**	
ss. 1–28.	Prosecution of Indian offenders in Parliament.	Not reproduced. These sections merely amend the machinery under Pitt's Act (24 Geo. III, sess. 2, c. 25).
s. 29.	. . . . .	Repealed by S. L. R. Act, 1892.
s. 30.	Jurisdiction of governor's and mayor's court at Madras.	Jurisdiction continued by s. 101. Repealed by S. L. R. Act, 1892.
s. 31.	. . . . .	Repealed by S. L. R. Act, 1872.
ss. 32–35.	. . . . .	Repealed by 33 Geo. III, c. 52, s. 146.
ss. 36, 37.	. . . . .	Repealed by S. L. R. Act, 1872.
s. 38.	Bonds executed in East Indies to be evidence in Britain, and vice versa.	Repealed as to British India by S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
26Geo.III, c. 57, s. 39.	. . . . .	Repealed by S. L. R. Act, 1892.
33Geo.III, c. 52, ss. 1–18.	**The East India Company Act, 1793.**	Repealed as to U. K. by S. L. R. Act, 1887.
s. 19.	Power of commissioners to send orders to India through secret committee of directors.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 36, and 21 & 22 Vict. c. 106, s. 27. See s. 14.
s. 20.	Appointment of secret committee of directors.	Not reproduced. Superseded by 21 & 22 Vict. c. 106. See s. 14.
s. 21.	Dispatches of secret committee, by whom to be prepared.	Repealed as to U. K. by S. L. R. Act, 1887.
s. 22.	Secret dispatches from India.	Amended by 21 & 22 Vict. c. 106, s. 28. Reproduced by s. 14 (2). The enumeration of subjects in s. 22 is not repeated in s. 14 (2). It differs from that given in 21 & 22 Vict. c. 106, s. 27, as to dispatches to India.
s. 23.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
s. 24.	Government of Bengal by Governor-General in Council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 39. See ss. 36, 49.
	Government of Madras and Bombay by Governor in Council.	Reproduced by s. 50 (1). The provision as to control of the revenues is superseded by 21 & 22 Vict. c. 106, s. 41. The provisions as to the military authority of the Madras and Bombay Governments are repealed by 56 & 57 Vict. c. 62.
	Number of members of council at Madras and Bombay.	Modified by 3 & 4 Will. IV c. 85, s. 57. Reproduced by s. 51 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 24 (*continued*).	Governors in Council of Madras and Bombay to be subject to control of Governor-General in Council.	Verbally modified by 3 & 4 Will. IV, c. 85, s. 65. Reproduced by s. 49 (1).
s. 25.	Directors to fill vacancies in offices of—	
	Governor-general . .	Not reproduced. Superseded by 24 & 25 Vict. c. 106, s. 29.
	Governors of Madras and Bombay	
	Members of council . .	Not reproduced. Superseded by 32 & 33 Vict. c. 97.
	Governor of the forts and garrisons at Fort William, Fort St. George, and Bombay	Not reproduced. Superseded by 16 & 17 Vict. c. 95, s. 30, which has itself been subsequently repealed.
	Commanders-in-chief .	
	Qualification for office of member of council of—	
	Governor-general . .	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 3.
	Governor of Madras or Bombay.	Reproduced by s. 51 (3). Provision as to seniority rep. by 24 & 25 Vict. c. 54, s. 7.
s. 26.	Power for His Majesty to fill vacancies in default of directors.	Repealed as to U. K. by S. L. R. Act, 1887.
s. 27.	Provisional appointments to offices of—	
	Governor-general, governor, and member of council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 61, and 24 & 25 Vict. c. 67, ss. 2, 5.
	Governor of the forts and garrisons at Fort William, Fort St. George, and Bombay	Not reproduced. See note on s. 25.
	Commanders-in-chief.	
s. 28.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
ss. 29, 30.	Temporary vacancy in office of—	
	Governor-general.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, ss. 50, 51.
	Governor	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 63.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III. c. 52, s. 31.	Temporary vacancy in office of member of council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 64, and 24 & 25 Vict. c. 67, s. 27.
s. 32.	Appointment of commander-in-chief as member of—	
	Governor-general's council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 3. Repealed in part, S.L.R. Act, 1892.
	Governor's council . .	Repealed by 56 & 57 Vict. c. 62.
	Salary of commander-in-chief as member of council.	Reproduced by s. 80.
s. 33.	Commander-in-chief in India to be a member of local council while in Madras or Bombay.	Reproduced by s. 51.
s. 34.	Absence or illness of member of council.	Not reproduced. Practically superseded by 3 & 4 Will. IV, c. 85, s. 64, and 24 & 25 Vict. c. 67, s. 27.
s. 35.	Removal of officers by Her Majesty.	Amended as to communication of order of removal by 21 & 22 Vict. c. 106, s. 38. Reproduced by s. 21 (1).
s. 36.	Removal of officers by directors of East India Company.	Reproduced by s. 21 (2).
	Exception as to officers appointed by Her Majesty on default of directors.	Not reproduced. Made unnecessary by abolition of Company.
s. 37.	If governor-general, &c., leaves India intending to return to Europe, his office vacated.	Re-enacted in substance by 3 & 4 Will. IV, c. 85, s. 76. Qualified as to members of council by 24 & 25 Vict. c. 67, s. 26. Reproduced by s. 82 (1).
	Evidence of intention to return to Europe.	Not reproduced. 3 & 4 Will. IV, c. 85, s. 79, contains no such provision.
	Resignation of office by governor-general, &c.	Reproduced by s. 82 (2).
	Salary and allowances to cease from date of departure or resignation.	Reproduced by s. 82 (4).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 37 (*continued*).	Salary and allowances not payable during absence.	Amended by 3 & 4 Will. IV, c. 85, s. 79. Reproduced by s. 82 (2).
s. 38.	Power to postpone matters proposed by members of council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 8, giving power to make rules of procedure.
s. 39.	Form and signature of proceedings.	Amended by 53 Geo. III, c. 155, s. 179, and Indian Act II of 1834. Reproduced by ss. 43 (1), 54 (1).
s. 40.	Authority of Governor-General in Council over local Governments.	Re-enacted in more general terms by 3 & 4 Will. IV, c. 85, s. 39. Reproduced by ss. 36 and 49 (1).
s. 41.	Duty of local Governments in case of conflict between orders of Governor-General in Council and orders of directors of East India Company.	Not reproduced. These elaborate provisions have been made unnecessary and unsuitable by change of circumstances.
s. 42.	Restriction on power of Governor-General in Council to make war or treaty.	Reproduced by s. 48.
s. 43.	Local Governments not to make war or treaty without orders of Governor-General in Council or East India Company.	Reproduced by s. 49 (2).
	Officers of local Governments to obey such orders of Governor-General in Council.	Reproduced by s. 49 (1).
	Governor, &c., disobeying orders of Governor-General in Council liable to be suspended or removed.	Not reproduced. See note on s. 49.
s. 44.	Local Governments to keep governor-general informed of their proceedings.	Reproduced by s. 49 (1).
ss. 45, 46.	Proceedings against persons suspected of dangerous correspondence.	Reproduced by s. 120.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, ss. 47–49.	Power for governor-general or Governor of Madras or Bombay to act against opinion of council.	Modified, as to governor-general, by 33 & 34 Vict. c. 3, s. 5. Reproduced by ss. 44 (2), (3), (4), 53 (5).
s. 50.	Person temporarily acting as governor-general or governor not to act against opinion of council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 65, and 24 & 25 Vict. c. 67, s. 50.
s. 51.	Power to act against opinion of council not to be exercised in certain cases.	Not reproduced. Superseded by 33 & 34 Vict. c. 3, s. 5, and by provisions as to Indian legislation.
s. 52.	Powers of local Government superseded by visit of governor-general.	Not reproduced. Superseded as to Governments of Madras and Bombay by 3 & 4 Will. IV, c. 85, s. 67.
s. 53.	Appointment and powers of vice-president during absence of governor-general.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 6, and by the appointment of a Lieutenant-Governor of Bengal.
s. 54.	Power of governor-general while absent from his council to issue orders to local Governments and officers.	Reproduced by s. 47 (2).
s. 55.	Suspension of governor-general's power to issue such orders.	Reproduced by s. 47 (3).
s. 56.	. . . . .	Repealed, 24 & 5 Vict. c. 54, s. 7.
s. 57.	Presidential restriction on civil appointments.	Reproduced by s. 93 (final words).
	Residence required to qualify civil servant for appointment.	Not reproduced. Repealed by 24 & 25 Vict. c. 54, s. 7.
ss. 58–61.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33Geo.III, c. 52, s. 62.	Receiving gifts to be a misdemeanour.	Re-enacted by 3 & 4 Will. IV, c. 85, s. 76. Reproduced by s. 117 (5).
s. 63.	Disposal of gifts and fines . .	Reproduced by s. 117 (last part).
s. 64.	Exception for fees of barristers, &c.	Reproduced by s. 117 (5).
s. 65.	Disobedience and breach of duty.	Re-enacted by 3 & 4 Will. IV, c. 85, s. 80. Reproduced by s. 117 (2), (3).
s. 66.	Corrupt bargain for giving up or obtaining employment.	Not reproduced. Superseded by 49 Geo. III, c. 126.
s. 67.	Jurisdiction of courts in India and Great Britain over offences by British subjects in Native States.	See s. 119 (2). Repealed as to Indian courts by Indian Act XI of 1872.
s. 68.	East India Company or its servants not to stay actions without approbation of Board.	Not reproduced. Cf. 13 Geo. III, c. 63, s. 35.
s. 69.	East India Company not to release sentence of British or Indian court against its servants.	Repealed as to U. K. by S. L. R. Act, 1887.
s. 70.	Forfeiture of office after absence for five years.	Amended as to military officers by 53 Geo. III, c. 155, s. 84. Not reproduced. Practically superseded by power to make rules as to furlough, &c.
ss. 71–136.	. . . . .	Repealed, S. L. R. Act, 1872.
s. 137.	Governor-general, governor, judges of supreme courts, members of council, and judicial and revenue officers in Bengal not to trade.	Reproduced by s. 117 (4).
	British subjects not to trade in salt, &c.	Not reproduced. Repealed by Indian Act XIV of 1870.
ss. 138, 139.	. . . . .	Repealed, S. L. R. Act, 1872.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33Geo.III, c. 52, s.140.	Procedure for offences under Act.	See s. 169.
s. 141.	Procedure, and limitation of time for proceedings.	S. 119 (3), following 21 Geo. III, c. 70, s. 7, substitutes 'five' for 'six' years. The provision in that section as to arrival in England is taken from 21 Geo. III, c. 70, s. 7. The provisions as to procedure are omitted as having been superseded by change of practice.
ss. 142–150.	. . . . .	Repealed, S.L.R. Act, 1872.
s. 151.	Appointment of justices of the peace.	Not reproduced. Rep. by Indian Act II of 1869.
ss. 152–155.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887.
s. 156.	Admiralty jurisdiction of Supreme Court, Calcutta.	Not reproduced. Effect saved by s. 102 (1), and by Article 33 of the Charter of the Calcutta High Court.
s. 157.	Appointment of coroners . .	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 158–160.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887.
s. 161.	. . . . .	Repealed, 4 & 5 Will. IV, c. 33.
s. 162.	Proceedings in respect of things done under Act to be taken within three years.	See s. 119 (3). Superseded as to India by Indian legislation, see Act IX of 1871.
s. 163.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887.
37Geo.III,	**The East India Act, 1797.**	
c. 142, s. 1.	Number of judges of Supreme Court, Calcutta.	Superseded by 24 & 25 Vict. c. 104, s. 2. Repealed, S.L.R. Act, 1892.
ss. 2, 3.	Pensions of judges . . .	Not reproduced. Superseded by 24 & 25 Vict. c. 104, s. 6. Repealed in part, S.L.R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 Geo. III, c. 142, s. 4.	Depositions	Repealed, Indian Act XIV of 1878, S. L. R. Act, 1892.
	Salaries and fees of officers of Supreme Court, Calcutta.	
ss. 5–7.	Registration, &c., in Supreme Court, of regulations made by Governor-General in Council.	
s. 8.	Constitution and powers of recorders' courts at Madras and Bombay.	Repealed, S. L. R. Act, 1892.
ss. 9, 10.	Jurisdiction of recorders' courts at Madras and Bombay.	Reproduced by s. 101. The powers and jurisdiction of the recorders' courts were vested in the supreme courts by 39 & 40 Geo. III, c. 79, s. 5 (Madras), and 4 Geo. IV, c. 71, s. 7 (Bombay).
s. 11.	Governor, members of his council, and recorder exempt from arrest or imprisonment by recorders' courts.	Reproduced by s. 105. See note on 13 Geo. III, c. 63, s. 17.
s. 11. proviso.	Governor and his council exempt from jurisdiction of recorders' courts for official act.	Reproduced by s. 105 (1) (*a*).
	Recorders' courts not to have jurisdiction in matters concerning the revenue.	Reproduced, s. 101 (3).
	Exemption of certain classes of persons from jurisdiction of recorders' courts.	Not reproduced. The corresponding provisions in 21 Geo. III, c. 70, ss. 9, 10, as to the Supreme Court, Calcutta, have been repealed by Indian Act XIV of 1870.
s. 12.	Rights of fathers of Hindu and Mahomedan families, and rules of caste, preserved.	Not reproduced. Corresponds to 21 Geo. III, c. 70, s. 18.
s. 13.	Jurisdiction of recorders' courts, Madras and Bombay.	Not reproduced. Saved by s. 101.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 Geo. III, c. 142, s. 13 (*continued*).	Proviso as to native laws and usages.	Reproduced by s. 108. See note to 21 Geo. III, c. 70, s. 17, supra.
	Power to make rules of procedure for such cases. Appearance and examination of witnesses in such cases.	Not reproduced. The corresponding provisions in 21 Geo. III, c. 70, s. 19, as to the Supreme Court, Calcutta, have been repealed by Indian Act XIV of 1870.
s. 14.	No action for acts done by or by order of judicial officers.	Not reproduced. Superseded by Indian Act XVIII of 1850.
	Procedure for prosecution of judicial officers.	Not reproduced. The corresponding provisions in 21 Geo. III, c. 70, ss. 24, 25, 26, as to the Supreme Court at Calcutta, have been repealed by Indian Act XIV of 1870.
s. 15.	Registration of native servants of East India Company.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
s. 16.	Appeal to His Majesty in Council.	
s. 17.	Transfer of records of mayors' courts, &c., to recorders' courts.	
s. 18.	Jurisdiction of mayors' courts, &c., transferred to recorders' courts.	
ss. 19–26.	Provisions as to recorders .	
s. 27.	Forms and rules as to process to be sent to Board for Affairs of India.	Not reproduced. Does not correspond to modern practice.
s. 28.	Loans by British subjects to native princes.	Reproduced by s. 118.
s. 29.	Report by law officers . .	Not reproduced. Does not require specific enactment.
s. 30.	Jurisdiction of courts of request.	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
39 & 40 Geo. III,	**The Government of India Act, 1800.**	
c. 79, s. 1.	Power of directors of East India Company to apportion territories, revenues, and civil servants between Governments of Madras, Bombay, and Bengal.	Not reproduced. As to territories, superseded by 24 & 25 Vict. c. 67, s. 47, and 28 & 29 Vict. c. 17, ss. 4, 5. See s. 57.
s. 2.	Constitution, powers, and jurisdiction of Supreme Court, Madras.	Reproduced by s. 101. See note to 13 Geo. III, c. 63, ss. 13, 14, supra.
s. 3.	Exemption of Governor of Madras and governor-general and their councils from jurisdiction of Supreme Court.	Reproduced by s. 105.
s. 4.	Transfer of records to Supreme Court.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 5.	Transfer of jurisdiction of Supreme Court.	See note to 13 Geo. III, c. 63, ss. 13, 14, supra. Repealed in part, S. L. R. Act, 1892.
s. 6.	Salaries of Madras judges . .	Repealed, S. L. R. Act, 1892.
s. 7.	Salaries of Madras judges to be in place of perquisites.	Not expressly reproduced. Covered by s. 99.
s. 8.	Allowances to Madras judges .	Repealed in part, S. L. R. Act, 1892. Covered by s. 99.
s. 9.	Salaries of judges of supreme courts at Calcutta and Madras, and Recorder of Bombay, to cease on judge leaving India.	Not reproduced. Salaries and allowances of high court judges are now fixed by the Secretary of State under 24 & 25 Vict. c. 104, s. 6.
s. 10.	Vacancy in office of Recorder of Bombay.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 11.	Power of Governor of Madras in Council to make regulations.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 12.	Absence of governor-general or governor from his council.	Reproduced as to governors by s. 53. Repealed as to governor-general, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
39 & 40 Geo. III, c. 79, s. 12 (*continued*).	Saving of governor-general's power to appoint a vice-president.	Not reproduced. This power was conferred by 33 Geo. III, c. 52, s. 53, which has been superseded by 24 & 25 Vict. c. 67, s. 6.
ss. 13–16.	. . . . .	Repealed, 9 Geo. IV, c. 74, s. 126, which section is itself repealed by S. L. R. Act, 1873.
s. 17.	Courts of request . . .	Repealed, Indian Act XIV of 1870, S.L.R. Act, 1892.
ss. 18, 19.	Corporal punishment . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 20.	Local extent of jurisdiction of Supreme Court, Calcutta.	Saved by s. 101 (1). Repealed in part, S. L. R. Act, 1892.
ss. 21, 22.	Grant of letters of administration.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 23, 24.	Insolvent debtors . . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 25.	Power to appoint judges of supreme courts at Calcutta, Madras, and Bombay, commissioners of prize.	Repealed by Prize Courts Act, 1894.
53 Geo. III, c. 155,	**The East India Company Act, 1813.**	
ss. 1–32.	. . . . .	Repealed, S. L. R. Act, 1873.
ss. 33–39.	. . . . .	Repealed, S. L. R. Act, 1874.
ss. 40, 41.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 42.	Control of India Board over colleges and seminaries in India.	Omitted as having been made unnecessary by alteration of circumstances.
s. 43.	Provision to be made for public education.	
ss. 44–48.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 49.	Salaries of bishops and archdeacons.	Not reproduced. These salaries may now be fixed and altered by the Secretary of State under 43 Vict. c. 3, s. 3.
s. 50.	Such salaries when to commence and cease. Such salaries to be in lieu of fees, &c.	

Session and Chapter.	*Title and short contents.*	*Remarks.*
53Geo.III, c. 155, ss. 51, 52.	Jurisdiction of Bishop of Calcutta.	Reproduced by s. 110. Ss. 51 and 52 extended to bishops of Madras and Bombay, and s. 52 verbally amended by 3 & 4 Will. IV, c. 85, ss. 92, 93.
s. 53.	Countersignature of ecclesiastical letters patent for Calcutta, Madras, or Bombay.	Not reproduced. Superseded by 47 & 48 Vict. c. 30 (Great Seal Act, 1884).
ss. 54–78.	. . . . .	Repealed, S.L.R. Act, 1873.
s. 79.	Signature of proceedings by the chief secretary or the principal secretary of the department.	Amended by Indian Act II of 1834. Reproduced by ss. 43 (1), 54 (1).
ss. 80, 81.	. . . . .	Repealed, S.L.R. Act, 1873.
s. 82.	Residence required to qualify civil servants for appointments exceeding in value £1,500 per annum.	Not reproduced. Virtually repealed by 24 & 25 Vict. c. 54, s. 7.
s. 83.	. . . . .	Repealed, S.L.R. Act, 1873.
s. 84.	Absence of military officers for five years.	Not reproduced. See note on 33 Geo. III, c. 52, s. 70.
s. 85.	Precedence of civil servants returning after five years' absence.	Omitted as having been superseded by rules of service.
s. 86.	Precedence of civil servants .	Omitted on the same ground. S. 56 of 33 Geo. III, c. 52, which this section amends, has been repealed by 24 & 25 Vict. c. 54, s. 7.
ss. 87, 88.	. . . . .	Repealed, S.L.R. Act, 1873.
s. 89.	Salaries of governor-general, governors of Madras and Bombay, members of council, and judges of high courts, to commence on their taking upon themselves the execution of their office.	Unnecessary, the power to fix the salaries of all these officers being now vested in the Secretary of State.
	Allowances for equipment and voyage.	Repealed by 43 Vict. c. 43, s. 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
53Geo.III, c. 155, ss. 90-92.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 93.	Superannuation allowances of East India Company's servants in England.	Not reproduced. As to officers transferred to Secretary of State's establishment, saved by 21 & 22 Vict. c. 106, s. 18.
s. 94.	Account of such allowances to be laid before Parliament.	Not reproduced. There is no corresponding provision in 21 & 22 Vict. c. 106, s. 18, as to superannuation allowances of officers first appointed to Secretary of State's establishment.
s. 95.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 96.	Power of Governor-General in Council, and the Governors of Madras and Bombay in Council, to make articles of war for native officers and soldiers.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 73; see also 24 & 25 Vict. c. 67, ss. 22, 43.
ss. 97–110.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 111.	Power of advocates-general at Calcutta, Madras, Bombay, and Prince of Wales' Island, to file informations for debts due to Crown.	Reproduced by s. 109.
ss. 112-122.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 123.	. . . . .	Repealed, S. L. R. Act, 1874.
ss. 124, 125.	. . . . .	Repealed, S. L. R. Act, 1873.
55Geo.III, c. 84, s. 1.	**The India Presidency Towns Act, 1815.** Power to extend limits of presidency towns.	Reproduced by s. 59. Residue of Act repealed, S. L. R. Act, 1873.
4 Geo. IV, c. 71, ss. 1, 2.	**The Indian Bishops and Courts Act, 1823.**	Repealed, S. L. R. Act, 1873.
s. 3.	Pensions to bishops and archdeacons.	Not reproduced. Superseded as to bishops by 43 Vict. c. 3, s. 3. Repealed as to archdeacons by 43 Vict. c. 3, s. 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
4 Geo. IV, c. 71, s. 4.	Residence as chaplain to count for pension as archdeacon.	Not reproduced. Unnecessary, in view of the Secretary of State's power under 43 Vict. c. 3, s. 3, to fix allowances.
s. 5.	House to be provided for Bishop of Calcutta. Expenses of visitations of Bishop of Calcutta.	Reproduced by s. 113. Extended to bishops of Madras and Bombay by 3 & 4 Will. IV, c. 85, s. 100.
s. 6.	Power of Bishop of Calcutta to admit to holy orders.	Reproduced by s. 110.
s. 7.	Constitution, powers, and jurisdiction of Supreme Court, Bombay. Exemption of Governor of Bombay and his council, and governor-general, from jurisdiction of the court.	Reproduced by s. 101. See note to 13 Geo. III, c. 63, ss. 13, 14, supra. Reproduced by s. 105.
ss. 8–10.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 11.	Salaries of judges when to commence. Such salaries to be in lieu of fees, &c.	Not reproduced. Superseded or made unnecessary by 24 & 25 Vict. c. 104, s. 6.
ss. 12, 13.	. . . . .	Repealed, S. L. R. Act, 1890.
ss. 14–16.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 17.	Powers of Supreme Courts, Madras and Bombay.	Reproduced by s. 103. See note to 13 Geo. III, c. 63, ss. 13, 14, supra.
s. 18.	. . . . .	Repealed, S. L. R. Act, 1873.
6 Geo. IV, c. 85,	**The Indian Salaries and Pensions Act, 1825.**	
ss. 1–3.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 4.	Salaries of judges of Supreme Courts, Madras and Bombay.	Not reproduced. Superseded by 24 & 25 Vict. c. 104, s. 6.
s. 5.	Payments where judge of Supreme Court, Recorder of Prince of Wales' Island, or Bishop of Calcutta, dies on voyage to India, &c.	Reproduced in part by s. 113. Repealed, as to Recorder of Prince of Wales' Island, by S. L. R. Act, 1878. Made unnecessary in part by 24 & 25 Vict. c. 104, s. 6, and 43 Vict. c. 3, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
6 Geo. IV, c. 85, ss. 6–14.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 15.	Pension of Bishop of Calcutta.	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
7 Geo. IV, c. 56,	**The East India Officers' Act, 1826.**	
s. 3.	Payments to representatives of deceased officers.	Reproduced by s. 82 (3). Ss. 1 and 2 and residue of Act repealed, S. L. R. Act, 1873.
3 & 4 Will. IV, c. 85,	**The Government of India Act, 1833.**	
ss. 1, 2.	Continuance of powers, &c., of East India Company till April 30, 1854.	Not reproduced. Spent.
	Property of Company to be held in trust for Crown.	Not reproduced. Superseded by 21 & 22 Vict. c. 106, ss. 1, 2.
ss. 3–18.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 19.	. . . . .	Repealed, S. L. R. Act, 1890.
ss. 20–24.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 25.	Control of Commissioners over acts of East India Company.	Reproduced by s. 2 (2).
ss. 26–35.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 36.	Communication of secret orders to India.	Reproduced by s. 14 (1). Amended by 21 & 22 Vict. c. 106, s. 27.
s. 37.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 38.	Presidency of Fort William to be divided into two presidencies (Bengal and Agra).	Not reproduced. This provision was suspended by 5 & 6 Will. IV, c. 52, s. 1, and 16 & 17 Vict. c. 95, s. 15, and has never been brought into operation. It is practically superseded by the appointment of a lieutenant-governor for the North-Western Provinces under 5 & 6 Will. IV, c. 52, s. 2.
	Power to declare limits of presidencies.	Reproduced by s. 57. This provision is modified by 28 & 29 Vict. c. 17, ss. 4, 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 39.	Government of India by Governor-General in Council.	Reproduced by s. 36. The provision as to control of the revenues of India is superseded by 21 & 22 Vict. c. 106, s. 41.
s. 40.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
ss. 41, 42.	. . . . .	Repealed, S.L.R. Act, 1874.
ss. 43, 44.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 45.	Laws made by Governor-General in Council—	
	to have same force in India as Acts of Parliament.	Not reproduced. There is no such provision in 24 & 25 Vict. c. 67.
	to be judicially noticed by Indian courts.	Not reproduced. Superseded as to laws in force in British India by Indian Act I of 1872, s. 57.
	need not be registered .	Not reproduced. Spent.
s. 46.	Restrictions on legislation affecting high courts.	Reproduced by s. 63 (3). This restriction is kept in force by 24 & 25 Vict. c. 67, s. 22.
s. 47.	Rules for procedure of Governor-General in Council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, ss. 8, 18.
s. 48.	Quorum of governor-general's legislative council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 15.
	Quorum of governor-general's executive council.	Reproduced by s. 42 (4).
	Equality of votes in—	
	Governor-general's executive council.	Reproduced by s. 44 (1).
	Governor-general's legislative council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 15.
s. 49.	. . . . .	Repealed, 33 & 34 Vict. c. 3, s. 4.
s. 50.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 51.	Saving of power of Parliament—	
	to legislate for India.	Reproduced by ss. 63, 121.
	to control Governor-General in Council.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 51 (*continued*).	Laws made by Governor-General in Council to be laid before Parliament.	Not reproduced. This provision does not appear to apply to laws made under 24 & 25 Vict. c. 67.
s. 52.	Enactments relating to Governor-General of Bengal to apply to Governor-General of India.	Not expressly reproduced.
ss. 53-55.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 56.	Government of Bengal by Governor in Council.	Not reproduced. Superseded by the appointment of a lieutenant-governor of Bengal under 16 & 17 Vict. c. 95, s. 16.
	Government of Madras and Bombay by Governors in Council.	Reproduced by s. 50 (1).
	Number of members of council at Madras and Bombay.	Modified by 3 & 4 Will. IV, c. 85, s. 57. Reproduced by s. 51 (2).
	Government of Agra	Not reproduced. There is no Presidency of Agra. See note to 3 & 4 Will. IV, c. 85, s. 38, supra.
s. 57.	Power to revoke or suspend appointment of councils.	Reproduced by s. 50 (3).
	Power to reduce number of members of council.	Reproduced by s. 51 (2).
s. 58.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 59.	Powers of governor where there is no council.	Reproduced by s. 50.
	Powers of Governor in Council.	See s. 56.
	Rights, &c., of governors and members of their councils.	
	Legislation by Governors in Council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, ss. 29, et seq.
	Sanction required to creation of office or grant of salary.	Reproduced by s. 49.
s. 60.	. . . . .	Repealed, S. L. R. Act, 1874.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 61.	Power of directors to make provisional appointments to any office, subject, in certain cases, to Her Majesty's approval.	Repealed, as to members of governor-general's council, by 24 & 25 Vict. c. 67, s. 2. Reproduced, so far as in force, by s. 83.
s. 62.	Member of council to fill vacancy in office of governor-general.	Reproduced by s. 85 (4), (5). S. 62 is superseded by 24 & 25 Vict. c. 67, s. 50, which provides for the Governor of Madras or Bombay acting as governor-general, but the section is still in force with respect to the interval before the arrival of the governor (see 24 & 25 Vict. c. 67, s. 51).
s. 63.	Vacancy in office of governor to be supplied by member of council, or (if no council) by secretary.	Reproduced by s. 86 (1), (2).
s. 64.	. . . . .	Repealed, S. L. R. Act, 1890.
. 65.	Authority of Governor-General in Council over certain local Governments.	Reproduced by s. 49 (1).
s. 66.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 67.	Powers of governors of Madras, Bombay, [and Agra] not suspended by visit of governor-general.	Reproduced by s. 49 (4).
s. 68.	Governors in Council to keep Governor-General in Council informed of their proceedings.	Reproduced by s. 49 (1).
s. 69.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 70.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 71.	New Presidency of Agra not to affect promotion of officers.	Not reproduced. No Presidency of Agra was ever constituted; see note to 3 & 4 Will. IV, c. 85, s. 38, supra.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 72.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 73.	Power to make articles of war.	Reproduced by s. 63 (1) (c).
	Judicial notice to be taken of such articles.	Not reproduced. Superseded, as to British India, by Indian Act I of 1872, s. 57.
	Saving of prior laws until articles made.	Not reproduced. Unnecessary. See Indian Act V of 1869.
s. 74.	Removal of officers by Her Majesty.	Amended, as to communication of order of removal, by 21 & 22 Vict. c. 106, s. 38. Reproduced by s. 21 (1).
s. 75.	Removal of officers by directors of East India Company.	Reproduced by s. 21 (2).
	Proviso as to officers appointed by Her Majesty on default of directors.	Not reproduced. The section (60) as to appointments made in such cases is repealed by the S. L. R. Act, 1874.
s. 76.	Salaries of governor-general, governor, and members of their councils.	Reproduced by s. 80. Amended, as to members of the governor-general's council, by 24 & 25 Vict. c. 67, s. 4. The salaries of the governors of Madras and Bombay, and of members of council, have since been fixed by the Secretary of State.
	Governor-general, governors, and members of council not to accept gifts; or to carry on trade.	Reproduced by s. 117 (4), (5).
	Expenses of equipment and voyage.	Repealed by 43 Vict. c. 3, s. 5.
s. 77.	Salary of governor-general, governors, and members of their councils to be reduced by amount of any pension, &c., received by them.	Reproduced by s. 80.
s. 78.	Power to make regulations as to patronage.	Amended by 21 & 22 Vict. c. 106, s. 30. Reproduced by s. 90 (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 79.	If governor-general, &c., returns to Europe his office vacated.	Reproduced by s. 82, except as to mode of resignation. See note on 33 Geo. III, 52, s. 37.
	Resignation of office by governor-general, &c.	
	Salary and allowances to cease from date of departure or resignation.	
	Salary and allowances not payable during absence.	
	Payment of salaries and allowances to representatives.	Reproduced by s. 82 (3).
s. 80.	Disobedience and breach of duty.	Reproduced by s. 117 (2), (3).
ss. 81–83.	. . . . .	Repealed, S.L.R. Act, 1890.
s. 84.	Laws to be made against illicit entry or residence.	Not reproduced. This direction has been observed. See Act III of 1864.
s. 85.	. . . . .	Repealed, S.L.R. Act, 1890.
s. 86.	Power to hold land . .	Omitted as no longer necessary. May be repealed or modified by Indian legislation. See 32 & 33 Vict. c. 96, s. 3.
s. 87.	No disabilities in respect of religion, colour, or place of birth.	Reproduced by s. 91.
s. 88.	Laws to be made for mitigating and abolishing slavery.	Not reproduced. This direction has been observed by the passing of Act V of 1843. Repealed, as to U.K., S.L.R. Act, 1888.
s. 89.	Salaries of bishops of Madras and Bombay.	Reproduced by s. 113. These salaries may now be fixed and altered by the Secretary of State under 43 Vict. c. 3, s. 3.
s. 90.	Salaries of Bishops of Madras and Bombay to be in lieu of fees.	Reproduced by s. 113.
s. 91.	Expenses of equipment and voyage.	Not reproduced. Repealed by 43 Vict. c. 3, s. 5.
s. 92.	Jurisdiction of bishops of Madras and Bombay.	Reproduced by s. 110.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 93.	Power to fix and vary limits of dioceses of Calcutta, Madras, and Bombay.	Reproduced by s. 110.
	Jurisdiction of bishops of Calcutta, Madras, and Bombay.	Reproduced by s. 110.
s. 94.	Bishop of Calcutta to be metropolitan. His jurisdiction . . . Superintendence of archbishop Subordination of bishops of Madras and Bombay.	Reproduced by s. 110.
s. 95.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 96.	Pensions of bishops . .	Not reproduced. These pensions may now be fixed by the Secretary of State under 43 Vict. c. 3, s. 3.
s. 97.	Payments where Bishop of Madras or Bombay dies on voyage to India, &c.	Reproduced by s. 113.
s. 98.	Pensions of bishops. . .	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
s. 99.	Consecration of person resident in India appointed to bishopric of Calcutta, Madras, or Bombay.	Reproduced by s. 112.
s. 100.	Visitations of bishops of Calcutta, Madras, and Bombay.	Reproduced by s. 113.
s. 101.	Limitation to salary of archdeacon. Limitation to expense to be incurred in respect of bishops and archdeacons.	Reproduced by s. 113.
s. 102.	Chaplains of Church of Scotland.	Reproduced by s. 115.
	Grants to other sects . .	Reproduced by s. 116.
ss. 103–107.	. . . . .	Repealed, 16 & 17 Vict. c. 95, s. 36.
ss. 108–111.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 112.	Government of St. Helena .	Not reproduced. Excepted from repeal.
ss. 113–117.	. . . . .	Repealed, S. L. R. Act, 1874.

Session and Chapter.	Title and Short Contents.	Remarks.
5 & 6 Will. IV, c. 52,	**The India (North-West Provinces) Act, 1835.**	
s. 1.	. . . . .	Repealed, S.L.R. Act, 1890.
s. 5.	Power to appoint a lieutenant-governor for the North-Western Provinces.	Not reproduced. Spent.
	Qualification for that office .	Reproduced by s. 55 (3).
	Power to declare extent of that lieutenant-governor's—	
	(1) territories . . .	Not reproduced. Superseded by 28 & 29 Vict. c. 17, s. 4.
	(2) authority . . .	Not reproduced. Superseded by 17 & 18 Vict. c. 77, s. 4.
7 Will. IV, & 1 Vict. c. 47,	**The India Officers' Salaries Act, 1837.**	
ss. 1, 2, 3.	Leave of absence . . .	See s. 82.
5 & 6 Vict. c. 119,	**The Indian Bishops Act, 1842.**	
s. 1.	Furlough of bishops . .	Not reproduced. Superseded by 34 & 35 Vict. c. 62.
	Furlough allowances of bishops	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
s. 2.	Second furlough of bishops .	Not reproduced. Superseded by 34 & 35 Vict. c. 62.
s. 3.	Furlough allowance to but one bishop at a time.	Not reproduced. Superseded by 34 & 35 Vict. c. 62, and 43 Vict. c. 3, s. 3.
s. 4.	Allowance to acting Bishop of Calcutta.	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
16 & 17 Vict. c. 95,	**The Government of India Act, 1853.**	
s. 1.	Continuance of powers of East India Company.	Not reproduced. Superseded by 21 & 22 Vict. c. 106, s. 1.
ss. 2–14.	. . . . .	Repealed, S.L.R. Act, 1878.
s. 15.	Suspension of 3 & 4 Will. IV, c. 85, s. 38, as to division of Bengal into two presidencies.	Not reproduced. See note to 3 & 4 Will. IV, c. 85, s. 38, supra.
	Continuance of 5 & 6 Will. IV, c. 52, s. 2, as to appointment of a lieutenant-governor of the North-Western Provinces.	Not reproduced. See note to 5 & 6 Will. IV, c. 52, s. 2, supra.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
16 & 17 Vict. c. 95, s. 16.	Power to declare that the governor-general shall not be Governor of Bengal.	Not reproduced. Superseded by 17 & 18 Vict. c. 77, s. 5.
	Power to appoint a governor of Bengal.	Not reproduced. Superseded by appointment of lieutenant-governor. See note to 24 & 25 Vict. c. 67, s. 46, infra.
	Cesser of power to appoint a deputy-governor of Bengal.	Not reproduced. Unnecessary now that a lieutenant-governor of Bengal has been appointed.
	Power to appoint a lieutenant-governor of Bengal.	Not reproduced. Power exercised.
	Service qualification for office of lieutenant-governor.	Reproduced by s. 55 (3).
	Power to declare and limit authority of Lieutenant-Governor of Bengal.	Not reproduced. Superseded by 17 & 18 Vict. c. 77, s. 4.
s. 17.	Power to constitute one new presidency. Power to authorize the appointment of a lieutenant-governor, and to declare the extent of his authority.	Not reproduced. The power of appointing a lieutenant-governor was exercised and exhausted by the appointment of a lieutenant-governor of the Punjab in 1854.
s. 18.	. . . . .	Repealed, 28 & 29 Vict. c. 17, s. 3.
s. 19.	Enactments as to existing presidencies to extend to new presidencies.	Not reproduced.
ss. 20, 21.	. . . . .	Repealed, S. L. R. Act, 1878.
ss. 22–24.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 25.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 26.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 27.	Fines, forfeitures, and escheats to form part of the revenues of India.	Reproduced by s. 22 (2) (c), (d).
	Disposal of escheats, &c.	Reproduced by s. 34.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
16 & 17 Vict. c. 95, s. 28.	Power to appoint commissioners to report on reforms proposed by the Indian Law Commissioners.	Omitted as unnecessary. The power could, if necessary, be exercised without express legislative authority.
ss. 29–31.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 32.	Regulations as to leave and furlough.	Repealed by s. 89.
ss. 33, 34.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 35.	Salaries of commander-in-chief in India and lieutenant-governors.	Reproduced by s. 80.
ss. 36–43.	. . . . .	Repealed, S. L. R. Act, 1878.
17 & 18 Vict. c. 77,	**The Government of India Act, 1854.**	
s. 1.	Authority for passing letters patent under the Great Seal Counter-signature of warrants under the Royal Sign Manual	Repealed, S. L. R. Act, 1892.
s. 2.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 3.	Power to take territory under the immediate authority and management of the Governor-General in Council.	Reproduced by s. 56.
	Saving as to laws . . .	Reproduced by s. 58.
s. 4.	Power to declare authority of Governor, &c., of Bengal and the North-Western Provinces.	Reproduced by s. 56.
s. 5.	Powers as to Bengal not transferred to Lieutenant-Governor of Bengal or North-Western Provinces to vest in Governor-General in Council. Governor-General of India to be no longer Governor of Bengal.	Not reproduced. Spent.
s. 6.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 7.	Definition of 'India' . .	See definitions in s. 124.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
17 & 18 Vict. c. 77, s. 8.	Act to be construed with 16 & 17 Vict. c. 95.	Not reproduced.
21 & 22 Vict. c. 108,	**The Government of India Act, 1858.**	
s. 1.	Transfer of Government of India to the Crown.	Not reproduced. Spent; see s. 2 (s. 1 of Digest).
	Definition of 'India' . .	See definitions in s. 124.
s. 2.	Government of India by the Crown.	Reproduced by s. 1.
	Revenues of India . . .	Reproduced by s. 22 (1), (2).
s. 3.	Secretary of State to exercise powers of East India Company.	Reproduced by s. 2.
	Counter-signatures of warrants	
s. 4.	Number of Secretaries and Under-Secretaries of State who may sit in House of Commons.	Excepted from repeal.
s. 5.	. . . . .	Repealed, S.L.R. Act, 1878.
s. 6.	Salary of Secretary of State and Under-Secretaries.	Reproduced by s. 2 (3).
s. 7.	Number of members of Council of India.	Amended by 52 & 53 Vict. c. 65, s. 1. Reproduced by s. 3 (1).
s. 8.	First members of council .	Repealed, S.L.R. Act, 1878.
s. 9.	Vacancies in council . .	Repealed, S. L. R. Act, 1892.
s. 10.	Not less than nine members of the council to have resided in British India.	Reproduced by s. 3 (3).
s. 11.	Members of council to hold office during good behaviour.	Superseded by 32 & 33 Vict. c. 97, s. 2, except as to members appointed under 39 Vict. c. 7. Reproduced by s. 3 (6).
	Removal of member on address of Parliament.	Reproduced by s. 3 (8).
s. 12.	Seat in council disqualification for Parliament.	Reproduced by s. 4.
s. 13.	Salary of members of council .	Reproduced by s. 3 (9).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 14.	. . . . .	Repealed, 32 & 33 Vict. c. 97, s. 5, which section is repealed by S. L. R. Act, 1883.
ss. 15, 16.	Establishment of Secretary of State.	Reproduced by s. 18.
s. 17.	Compensation to officers .	Repealed, S. L. R. Act, 1878.
s. 18.	Superannuation allowance to officers transferred from home establishment of East India Company to Secretary of State's establishment.	Not reproduced. Personal.
	Superannuation allowance to officers appointed on Secretary of State's establishment.	Reproduced by s. 19.
s. 19.	Duties of Council of India .	Reproduced by s. 6.
	Signature and address of orders, &c.	Reproduced by s. 15.
s. 20.	Committees of council, &c. .	Reproduced by s. 11.
s. 21.	Vice-president of council .	Reproduced by s. 8 (1), (2).
s. 22.	Quorum of council . . .	Reproduced by s. 7 (1).
	Who to preside at meetings .	Reproduced by s. 8 (3).
	Council may act notwithstanding vacancy.	Reproduced by s. 7 (2).
	Meetings when to be held .	Reproduced by s. 9.
s. 23.	Procedure at meetings . .	Reproduced by s. 10.
ss. 24, 25.	Submission of orders to council and record of opinions.	Reproduced by s. 12.
s. 26.	Provision for cases of urgency.	Reproduced by s. 13.
s. 27.	Communication of secret orders to India.	Reproduced by s. 14 (1).
s. 28.	Secret dispatches to England .	Reproduced by s. 14 (2).
s. 29.	Appointment by Her Majesty of—	
	Governor-general . .	Reproduced by s. 37.
	Fourth ordinary member of governor-general's council.	Repealed, S. L. R. Act, 1878.
	Governors of presidencies .	Reproduced by s. 50 (2).
	Advocates-general . .	Reproduced by s. 109.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict.c.106, s. 29 (*continued*).	Appointment of members of councils of governor-general and governors.	Repealed, S.L.R. Act, 1878.
	Appointment of lieutenant-governors.	Reproduced by s. 55 (2).
s. 30.	Regulations as to the making of appointments in India.	Reproduced by s. 90.
	Power to restore officers suspended or removed.	Not reproduced.
s. 31.	. . . . .	Repealed, S.L.R. Act, 1878.
s. 32.	Regulations for admission to covenanted civil service.	Reproduced by s. 93.
s. 33.	Cadetships and other appointments.	Reproduced in substance by s. 20 (1).
s. 34.	Regulations for admission to cadetships.	Spent.
s. 35.	Selection for cadetships . .	Reproduced in substance by s. 20 (1).
s. 36.	Mode of making nominations for cadetships.	Not reproduced. Virtually repealed by abolition of Indian Army.
s. 37.	Regulations as to appointments and admission to service.	Reproduced by s. 20 (2).
s. 38.	Removal of officers by Her Majesty to be communicated to Secretary of State in Council.	Reproduced by s. 21 (1).
s. 39.	Property, &c., of East India Company—	
	To vest in Her Majesty .	Not reproduced. Spent.
	To be applied for purposes of Government of India.	Reproduced by s. 22 (3).
s. 40.	Power of Secretary of State—	
	(1) To sell, mortgage, and buy property.	Reproduced by s. 31.
	(2) To make contracts .	Reproduced by s. 32 (1).
s. 41.	Control of Secretary of State over revenues of India.	Reproduced by s. 23.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 42.	Application of revenues. Money vested in Her Majesty or accruing from property to be applied in aid of revenues.	Reproduced by s. 22.
s. 43.	Account of Secretary of State in Council with Bank.	Reproduced by s. 25.
s. 44.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 45.	Stock accounts to be opened at Bank.	Not reproduced. Spent.
	Every such account to be a public account.	Reproduced by s. 25 (5).
s. 46.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 47.	Powers of Secretary of State as to sale and purchase of stock.	Reproduced by s. 22.
s. 48.	Disposal of other securities .	Reproduced by s. 27.
s. 49.	Exercise of borrowing powers.	Reproduced by s. 28.
s. 50.	Forgery of bonds . . .	Repealed, S. L. R. Act, 1892.
s. 51.	System of issuing warrants for payment.	Not reproduced. Superseded by Order in Council of August 27, 1860.
s. 52.	Audit of Indian accounts .	Reproduced by s. 30.
s. 53.	Accounts to be annually laid before Parliament.	Reproduced by s. 29.
s. 54.	Communication to Parliament of orders for commencing hostilities.	Reproduced by s. 16.
s. 55.	Expenses of military operations beyond the frontier.	Reproduced by s. 24.
s. 56.	Military and naval forces of East India Company transferred to the Crown.	Not reproduced.
s. 57.	Her Majesty's Indian forces .	Not reproduced. Superseded by 23 & 24 Vict. c. 100.
s. 58.	Servants of East India Company transferred to the Crown.	Not reproduced.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 59.	Orders of East India Company.	Reproduced by s. 123.
s. 60.	Cesser of functions of proprietors and directors of East India Company.	Not reproduced. Spent.
s. 61.	Board of Control abolished .	Not reproduced. Spent.
s. 62.	Records, &c., of East India Company to be delivered to Secretary of State in Council.	Not reproduced. Spent.
s. 63.	Exercise of powers of governor-general before taking seat in council.	Reproduced by s. 84.
s. 64.	Existing provisions to be applicable to Secretary of State in Council, &c.	Not expressly reproduced. See general saving in s. 121.
s. 65.	Rights and liabilities of the Secretary of State in Council.	Reproduced by s. 35 (1), (2).
s. 66.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 67.	Treaties, liabilities, and contracts of East India Company.	Reproduced by s. 123.
s. 68.	Secretary of State and Council of India not personally liable.	Reproduced by s. 35 (3).
ss. 69, 70.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 71.	East India Company not to be liable in respect of claims arising out of covenants made before Act.	Not reproduced. East India Company dissolved.
ss. 72, 73.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 74.	Commencement of Act . .	Not reproduced. Spent.
s. 75.	. . . . .	Repealed, S. L. R. Act, 1878.
22 & 23 Vict. c. 41,	**The Government of India Act, 1859.**	
s. 1.	Power to sell, mortgage, and buy property and make contracts in India.	Reproduced by s. 33 (1), (2), (5).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
22 & 23 Vict. c. 41, s. 2.	Form of execution of assurances in India.	Amended by 33 & 34 Vict. c. 59, s. 2. Reproduced by s. 33 (3).
	Enforcement against Secretary of State.	Reproduced by s. 33 (3).
	Secretary of State, &c., not personally liable.	Reproduced by s. 33 (4).
s. 3.	Mode of signing drafts on Bank of England.	Reproduced by s. 25 (3).
s. 4.	Validity of contracts made before passing of Act.	Not reproduced. Spent.
s. 5.	Ditto	Not reproduced. Spent.
	Execution of contracts made by Secretary of State.	
s. 6.	Actions by or against Secretary of State.	Reproduced by s. 35 (1).
24 & 25 Vict. c. 54,	**The Indian Civil Service Act, 1861.**	
s. 1.	Validation of appointments .	Not reproduced. Spent.
s. 2.	Offices reserved to covenanted civil service.	Reproduced by s. 93.
ss. 3, 4.	Power to make provisional appointments in certain cases.	Reproduced by s. 95.
s. 5.	Offices not reserved to covenanted civil service.	Covered by s. 20 (2).
s. 6.	Saving as to lieutenant-governor.	Schedule II does not include lieutenant-governor.
s. 7.	Repeal of 33 Geo. III, c. 52, s. 56, &c.	Not reproduced. Spent.
Sch.	List of offices reserved to covenanted civil service.	Reproduced by Schedule II.
24 & 25 Vict. c. 67,	**The Indian Councils Act, 1861.**	
s. 1.	Short title	Not reproduced. Spent.
s. 2.	Repeal of enactments . .	Not reproduced. Spent.
s. 3.	Number of members of governor-general's council.	Amended by 37 & 38 Vict. c. 91, s. 1. Reproduced by s. 39 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 3 (*continued*).	Number of appointments to be made by Secretary of State.	Repealed by S.L.R. Act, 1878.
	Proportion of members who must have served in India.	Reproduced by s. 39 (3).
	Member to relinquish military duty.	Reproduced by s. 39 (5).
	One member to be a barrister.	Reproduced by s. 39 (4).
	Number of appointments to be made by Her Majesty.	Reproduced by s. 39 (1). All members are now appointed by the Crown. See 32 & 33 Vict. c. 97, s. 8.
	Power to appoint commander-in-chief an extraordinary member.	Reproduced by s. 40 (1).
s. 4.	Present members of governor-general's council to continue.	Not reproduced. Spent.
	Power to appoint a fifth member.	Not reproduced. Spent.
	Salary of members . . .	Reproduced by s. 80.
s. 5.	Power of Secretary of State, or Her Majesty, to make provisional appointment to office of member of governor-general's council.	Reproduced by s. 83.
s. 6.	Appointment and powers of president of governor-general's council.	Reproduced by s. 45.
	Powers of governor-general when absent from council.	Reproduced by s. 47 (1).
s. 7.	Absence of governor-general or president from council.	Reproduced by s. 46.
s. 8.	Power to make rules and orders for governor-general's executive council.	Reproduced by s. 43 (2).
s. 9.	Council where to assemble. .	Reproduced by s. 42 (1).
	Governor of Madras or Bombay when to be an extraordinary member of governor-general's council.	Reproduced by s. 40 (2).
	Lieutenant-governor when to be an additional member of the council.	Reproduced by s. 60 (6). As to chief commissioners, see 33 Vict. c. 3, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 10.	Appointment of additional members of council for legislation.	Amended by 55 & 56 Vict. c. 14, s. 1. Reproduced by s. 61.
s. 11.	Term of office of additional members.	Reproduced by s. 60.
s. 12.	Resignation of additional member.	Reproduced by s. 88 (1).
s. 13.	Power for governor-general to fill vacancies of additional members.	Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 14.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (*c*).
s. 15.	President, quorum, and casting vote at legislative meetings of the governor-general's council.	Reproduced by s. 62.
s. 16.	First legislative meeting.	Not reproduced. Spent.
s. 17.	Times and places of subsequent legislative meetings.	Reproduced by s. 61.
s. 18.	Rules for conduct of legislative business.	Reproduced by s. 67.
s. 19.	Business at legislative meetings.	Amended by 55 & 56 Vict. c. 14, s. 2. Reproduced by s. 64.
s. 20.	Assent of governor-general to acts of his council.	Reproduced by s. 65.
s. 21.	Power of Crown to disallow acts.	Reproduced by s. 66.
s. 22.	Legislative power of Governor-General in Council.	Reproduced by s. 63 (1), (4).
	Governor-General in Council not to have power to repeal or affect—	Reproduced by s. 63 (2).
	(1) The Indian Councils Act, 1861, or	Reproduced by s. 63 (2) (*a*).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 22 (*continued*).	(2) 3 & 4 Will. IV, c. 85, 16 & 17 Vict. c. 95, 17 & 18 Vict. c. 77, 21 & 22 Vict. c. 106, or 22 & 23 Vict. c. 41, or	Not reproduced. So much of these Acts as is now in force is embodied in the Digest. As to 3 & 4 Will. IV, c. 85, ss. 81–86, see 32 & 33 Vict. c. 98, s. 3.
	(3) Any Act enabling the Secretary of State to raise money, or	Reproduced by s. 63 (2) (*c*).
	(4) The Army Acts, or	Reproduced by s. 63 (2) (*d*).
	(5) Any Act of Parliament passed after 1860 affecting Her Majesty's Indian territories.	Reproduced by s. 63 (2) (*b*).
	Governor-General in Council not to have power to pass laws affecting authority of Parliament, &c.	Reproduced by s. 63 (2). The reference to the East India Company is omitted as obsolete.
s. 23.	Power to make ordinances . Such ordinances may be superseded by Acts.	Reproduced by s. 69. Not reproduced; covered by s. 64 (4).
s. 24.	Laws made by Governor-General in Council not invalid because affecting prerogative of the Crown.	Reproduced by s. 79 (*b*).
s. 25.	Validation of laws made for the non-regulation provinces.	Not reproduced. Spent.
s. 26.	Leave of absence to ordinary members of council.	Reproduced by s. 81.
s. 27.	Vacancy in office of ordinary member of council.	Reproduced by s. 87.
s. 28.	Power to make rules and orders for Executive Councils of Madras and Bombay.	Reproduced by s. 54 (2).
s. 29.	Appointment of additional members of council for Madras and Bombay.	Reproduced by s. 72.
s. 30.	Term of office of additional members.	Reproduced by s. 71 (7).
s. 31.	Resignation of additional member.	Reproduced by s. 88 (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 32.	Power for governor of presidency to fill vacancies of additional members.	Not reproduced. Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 33.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (c).
s. 34.	President of governor's council.	Reproduced by s. 73 (2).
	Quorum and casting vote at legislative meetings.	Reproduced by s. 72 (1), (4).
s. 35.	First legislative meeting.	Not reproduced. Spent.
s. 36.	Time and place of legislative meetings.	Reproduced by s. 72 (5).
s. 37.	Rules for conduct of business at legislative meetings.	Reproduced by s. 77 (4).
s. 38.	Business at legislative meetings.	Reproduced by s. 77 (1), (2), (3).
s. 39.	Assent of governor to acts of local council.	Reproduced by s. 78 (1).
s. 40.	Assent of governor-general to such acts.	Reproduced by s. 78 (3), (4).
s. 41.	Power of Crown to disallow such acts.	Reproduced by s. 78 (5), (6).
s. 42.	Legislative powers of local councils.	Reproduced by s. 76 (1).
	Power to repeal laws made in India before 1861.	Amended by 55 & 56 Vict. c. 14, s. 5. Reproduced by s. 76 (4).
	Local legislature not to have power to affect Acts of Parliament.	Reproduced by s. 76 (2).
s. 43.	Sanction required to legislation by local councils in certain cases.	Reproduced by s. 76 (3), (5).
s. 44.	Power to establish legislatures in Bengal, the North-Western Provinces, and the Punjab.	Reproduced by ss. 70, 74.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 45.	Constitution of councils of lieutenant-governors.	Reproduced by s. 73 (1), (2), (3).
	Procedure at meetings of lieutenant-governor's council.	Reproduced by s. 75.
s. 46.	Power to constitute new provinces and to appoint a lieutenant-governor for each, and declare and limit his authority.	Reproduced by s. 74.
s. 47.	Power to fix and alter boundaries.	Reproduced by s. 74.
	Saving as to laws . . .	Reproduced by s. 74.
s. 48.	Legislative powers of Lieutenant-Governors in Council.	Reproduced by s. 76.
	Nomination of members of lieutenant-governors' councils.	Reproduced by ss. 73, 79 (c), 88.
	Conduct of business in lieutenant-governors' councils.	Reproduced by s. 77.
	Assent to, and disallowance of, acts of lieutenant-governors' councils.	Reproduced by s. 78.
s. 49.	Previous assent of Crown to proclamation—	
	Constituting councils .	Modified by 28 & 29 Vict. c. 17, s. 5.
	Altering boundaries . .	Reproduced by s. 74.
	Constituting new provinces	Reproduced by s. 74.
ss. 50, 51.	Governor of Madras or Bombay to fill vacancy in office of governor-general.	Reproduced by s. 85.
s. 52.	Saving of certain rights, powers, and things done.	Reproduced by s. 123.
s. 53.	Meaning of term 'in council.'	Effect reproduced by language of Digest, see ss. 50–54, &c.
s. 54.	. . . . .	Repealed, S.L.R. Act, 1878.
24 & 25 Vict. c. 104, s. 1.	**The Indian High Courts Act, 1861.**	
	Power to establish high courts at Calcutta, Madras, and Bombay.	Not reproduced. Spent.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104, s. 2.	Constitution of those courts .	Reproduced by s. 96. As to high courts, see s. 17.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Tenure of office of judges .	Reproduced by s. 97 (1).
	Resignation of judges to be submitted to governor-general or local Government.	Reproduced by s. 97 (2).
s. 5.	Precedence of judges . .	Reproduced by s. 98.
s. 6.	Salaries, &c., of judges . .	Reproduced by s. 99.
s. 7.	Vacancy in office of chief justice or other judge.	Reproduced by s. 100.
s. 8.	Abolition of supreme and sadr courts.	Not reproduced. Spent.
s. 9.	Jurisdiction and powers of high courts.	Not reproduced; saved by s. 101 (1).
s. 10.	. . . . .	Repealed, 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 11.	Provisions applicable to supreme courts and judges thereof to apply to high courts and judges thereof.	Reproduced by s. 101.
s. 12.	Pending proceedings . .	Not reproduced. Spent.
s. 13.	Exercise of jurisdiction by single judges or division courts.	Reproduced by s. 103 (1).
s. 14.	Chief justice to determine what judges shall sit alone or in the division courts.	Reproduced by s. 103 (2).
s. 15.	Powers of high courts with respect to subordinate courts.	Reproduced by s. 102.
s. 16.	Power to establish new high court.	Not reproduced. Exhausted by establishment of high court at Allahabad.
	Number and qualifications of judges of new courts.	Reproduced by ss. 102, 104.
	Provisions applicable to new courts.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104, s. 17.	Power to revoke, alter, or supplement letters patent of high courts.	Spent.
s. 18.	. . . . .	Repealed by 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 19.	Definition of 'barrister' .	Reproduced by s. 96.
	Local government . . .	Reproduced by ss. 97 (2), 100, 102.
28 & 29 Vict. c. 15,	**The Indian High Courts Act, 1865.**	
s. 1.	Extension of time for granting new letters patent for high courts.	Not reproduced. Spent.
s. 2.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 3.	Power to make orders altering local limits of jurisdiction of high courts.	Reproduced by s. 104.
s. 4.	Power to disallow such orders	
s. 5.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 6.	Saving of legislative powers of Governor-General in Council.	Reproduced by s. 104.
28 & 29 Vict. c. 17,	**The Government of India Act, 1865.**	
s 1.	Power of Governor-General in Council to legislate for British subjects in Native States.	Reproduced by s. 63 (1) (*b*).
s. 2.	Foregoing section to be read as part of s. 22 of 24 & 25 Vict. c. 67.	Section 22 is incorporated in s. 64.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Power to appoint territorial limits of presidencies and lieutenant-governorships.	Reproduced by s. 57.
s. 5.	Disallowance by Secretary of State of proclamation altering boundaries of province.	Reproduced by s. 57, prov. (2).
	Sanction of Her Majesty to proclamation transferring entire district.	Reproduced by s. 57, prov. (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
32 & 33 Vict. c. 97,	**The Government of India Act, 1869.**	
s. 1.	Vacancies in Council of India to be filled by Secretary of State.	Reproduced by s. 3 (3).
s. 2.	Term of office of member of Council of India.	Reproduced by s. 3 (4), (5).
s. 3	Power to reappoint member.	Reproduced by s. 3 (5).
s. 4.	Former Acts to apply to future members.	Effect reproduced by language of Digest.
s. 5.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 6.	Resignation of member . .	Reproduced by s. 3 (7).
	Pension of members appointed before the Act.	Reproduced by s. 3 (6). Qu. expired?
s. 7.	Claims to compensation . .	Reproduced by s. 5.
s. 8.	Appointment of ordinary members of the councils of the governor-general and governors.	Reproduced by ss. 39 (1) and 51 (1).
32 & 33 Vict. c. 98,	**The Indian Councils Act, 1869.**	
s. 1.	Power of Governor-General in Council to legislate for native Indian subjects.	Reproduced by s. 63 (1) (c).
s. 2.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 3.	Power to repeal or amend ss. 81 to 86 of 3 & 4 Will. IV, c. 85.	Effect reproduced by language of Digest.
33 & 34 Vict. c. 3,	**The Government of India Act, 1870.**	
s. 1.	Power to make regulations .	Reproduced by s. 68.
s. 2.	Regulations to be sent to Secretary of State.	Reproduced by s. 68 (3).
	Laws and regulations to control and supersede prior regulations.	Reproduced by s. 68 (2).
s. 3,	Lieutenant-governor or chief commissioner, when to be an additional member of governor-general's council.	Reproduced by s. 60 (6).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 & 34 Vict. c. 3, s. 4.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 5.	Power of governor-general to act against opinion of council.	Reproduced by s. 44 (2), (3).
s. 6.	Power to appoint natives of India to offices reserved to the covenanted civil service.	Reproduced by s. 95.
33 & 34 Vict. c. 59,	**The East India Contracts Act, 1870.**	
s. 1.	Validity of deed, &c. . .	Repealed, S. L. R. Act, 1883.
s. 2.	Power to vary form of execution of assurances.	Reproduced by s. 33 (3).
34 & 35 Vict. c. 34,	**The Indian Councils Act, 1871.**	
s. 1.	Validation of Acts of local legislatures conferring jurisdiction over European British subjects.	Reproduced by s. 79 (*c*).
s. 2.	Committal of European British subjects.	Not reproduced. Superseded by Indian Act X of 1882, s. 447.
s. 3.	Power of local legislatures to amend and repeal Acts declared valid by Indian Act XXII of 1870.	Not reproduced. Superseded by 55 & 56 Vict. c. 14, s. 5. See s. 76 (4).
34 & 35 Vict. c. 62,	**The Indian Bishops Act, 1871.**	
s. 1.	Power to make rules as to leave of absence of Indian bishops.	Reproduced by s. 114.
	Proviso as to limits of expense.	Reproduced by s. 113.
37 & 38 Vict. c. 77,	**The Colonial Clergy Act, 1874.**	
s. 13.	Provisions as to Indian bishops.	Reproduced by s. 110 (5).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 & 38 Vict. c. 91,	**The Indian Councils Act, 1874.**	
s. 1	Power to appoint a sixth member to governor-general's council.	Reproduced by s. 39 (1), (2).
	Provisions as to other members to apply to the sixth member.	
	The sixth member to be called member for public works.	
s. 2.	Power to diminish number of members of governor-general's council to five.	Reproduced in substance by s. 39 (2).
	When number diminished, no temporary appointment to be made.	Reproduced by s. 87.
s. 3.	Saving of— (1) 24 & 25 Vict. c. 67, s. 8, and 33 & 34 Vict. c. 3, s. 5. (2) Powers of governor-general in respect of his council.	Provisions saved reproduced by Digest.
39 & 40 Vict. c. 7,	**The Council of India Act, 1876.**	
s. 1.	Appointment to Council of India of persons with professional or other peculiar qualifications.	Reproduced by s. 3 (6).
43 Vict. c. 3, s. 1.	**The Indian Salaries and Allowances Act, 1880.** Short title	Not reproduced. Spent.
s. 2.	Allowances of certain officials for equipment and voyage.	Reproduced by ss. 80, 113 (1).
s. 3.	Power to fix salaries and allowances of bishops and archdeacons of Calcutta, Madras, and Bombay.	Reproduced by s. 113 (1).
	Saving as to salaries at commencement of Act.	Not reproduced. Personal.
s. 4.	Charges on Indian revenues not to be increased.	Reproduced by ss. 80, 113.
s. 5.	Repeal of enactments . .	Repealed, S. L. R. Act, 1894.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
44 & 45 Vict. c. 63,	**The India Office Auditor Act, 1881.**	
s. 1.	Superannuation allowance of India Office auditor and his assistants.	Reproduced by s. 30 (10) and s. 126.
s. 2.	Short title . . .	Not reproduced.
47 & 48 Vict. c. 38,	**The Indian Marine Service Act, 1884.**	
s. 1.	Short title	Not reproduced.
ss. 2, 3.	Power of Governor-General in Council to make laws for the Indian Marine Service.	Reproduced by s. 63 (1) (*d*), (5), (6).
s. 4.	Such laws—	
	to have same force as Acts of Parliament.	Not reproduced. There is no such provision in 24 & 25 Vict. c. 67.
	to be judicially noticed by all courts.	Not reproduced. As to Indian courts, see Indian Act I of 1872, s. 57.
s. 5.	Restriction on legislation affecting high courts.	Reproduced by s. 63 (3).
s. 6.	Power to place Indian Marine Service under Naval Discipline Act in time of war.	Left outstanding.
52 & 53 Vict. c. 65,	**The Council of India Reduction Act, 1889.**	
s. 1.	Power to reduce number of Council of India.	Reproduced by s. 3 (1).
s. 2.	Short title	Not reproduced.
55 & 56 Vict. c. 14,	**The Indian Councils Act, 1892.**	
s. 1.	Increase of number of members of Indian legislative councils.	Reproduced by ss. 60, 71, 73.
s. 2.	Business at legislative meetings	Reproduced by ss. 64, 77.
s. 3.	Meaning of expressions referring to Indian territories.	Reproduced by s. 60.
s. 4.	Vacancies in number of additional members of councils.	Reproduced by s. 88.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
55 & 56 Vict. c. 14, s. 5.	Powers of Indian local legislatures.	Reproduced by s. 76.
s. 6.	Definitions	Reproduced by ss. 70, 74, 77.
s. 7.	Saving of powers of Governor-General in Council.	Not reproduced.
s. 8.	Short title	Not reproduced.
56 & 57 Vict. c. 70,	**The East India Loan Act, 1893.**	
s. 5.	Signature of debentures and bills	Reproduced by s. 9.

CHAPTER IV

STATUTORY RULES

I.—Rules for the Conduct of the Legislative Business of the Council of the Governor-General.

The following rules for the conduct of the legislative business of the council of the Governor-General of India were made by the council of the governor-general assembled for the purpose of making laws and regulations at the meeting held on February 4, 1897, and received the assent of His Excellency the Governor-General on the same day. [Published under notification No. 3, dated February 5, 1897, in the Gazette of India of the sixth idem, part i, page 97.]

i. *Preliminary.*

1. These rules supersede the rules for the conduct of business at the meetings of the council made on February 11, 1873, and February 16, 1883.

2. In these rules—

'Council' means the council of the Governor-General of India assembled for the purpose of making laws and regulations.

'President' means the governor-general or (during the time of his visit to any part of India unaccompanied by his council) the president nominated by the Governor-General in Council, under the Indian Councils Act, 1861, section 6; or, in the absence of both the governor-general and the president so nominated, the senior ordinary member of council present and presiding.

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'Member' means a member of the council, whether ordinary, extraordinary, or additional.

'Secretary' means the secretary to the Government of India in the Legislative Department, and includes the deputy-secretary and every person for the time being exercising the functions of the secretary; and

'Local Government' includes a chief commissioner.

ii. *Meetings of the Council.*

3. The council shall ordinarily meet at eleven a.m., and shall not prolong its sitting after four p.m., unless the president otherwise directs.

4. The quorum shall be seven, including the president.

5. The governor or lieutenant-governor and the law member shall sit where the president may direct.

Subject to any such direction, the members shall sit in the following order, beginning from the right of the president:—

(1) The commander-in-chief.

(2) The ordinary members according to seniority.

(3) The additional members according to seniority.

6. The president may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day, or to any hour of the same day.

7. The president shall preserve order, and all points of order shall be decided by him, no discussion thereupon being allowed.

8. A member desiring to make any observations on any subject before the council shall address the president without rising from his chair.

9. On all matters brought before the council, after the member who makes a motion has spoken, each member consecutively, beginning with the member on the left of the president, may make such observations as he thinks proper. The law member, however, may speak according to the position of the seat he would occupy if he sat in order of

seniority, and not according to the seat he may occupy at the council table under Rule 5.

After all the members in turn have had an opportunity of speaking, the mover may speak once by way of reply, and any other member may, with the permission of the president, speak once by way of explanation:

Provided that, if the matter be an amendment of a Bill, the member in charge of the Bill shall be entitled to speak next after the mover of the amendment.

10. When, for the purpose of explanation during discussion, or for any other sufficient reason, any member has occasion to ask a question of another member on any measure then under the consideration of the council, he shall ask the question through the president.

11. Any member may speak at the request and on behalf of another member who is unable to express himself in English.

12. On every motion before the council the question shall be put by the president, and shall be decided by a majority of votes.

In case of a division, the votes shall be taken by the secretary in consecutive order, beginning with the member on the left of the president.

After the question is put, no further discussion upon it shall be allowed.

13. Any member may ask for any papers or returns connected with any Bill before the council. The president shall determine, either at the time or at the meeting of the council next following, whether the papers or returns asked for can be given.

14. Communications on matters connected with any Bill before the council may be addressed, either in the form of a petition to the Governor-General in Council, or in a letter to the secretary, and must in either case be sent to the secretary. Ordinarily, such communications will not be answered.

Except in the case of the high court at Fort William, such communications shall ordinarily be sent through the local Government.

15. The secretary shall either cause such communications to be printed and send a copy to each member, or circulate them for the perusal of each member.

iii. *Introduction and Publication of Bills.*

16. Any member desiring to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861, shall give the secretary at least three days' previous notice of the title and object of the Bill.

If such motion be carried, the Bill, with a full statement of objects and reasons, shall, if not already prepared, be prepared by the member or (if he so desire) by the secretary in consultation with the member.

17. The secretary shall then cause the Bill, together with the statement of objects and reasons, to be printed, and shall send a copy to each member.

If any of the members are unacquainted with English, he shall also, if requested, cause the Bill and the statement of objects and reasons to be translated into Hindustani for their use.

18. The council may, at any time after leave to introduce a Bill has been granted, direct that the Bill be published in such manner as the council thinks fit.

19. When a Bill is introduced, or on some subsequent occasion, the member in charge of it shall make one or more of the following motions :—

(1) That it be referred to a select committee ; or,

(2) That it be taken into consideration by the council, either at once or at some future day to be then mentioned ; or,

(3) That it be circulated for the purpose of eliciting opinion thereon.

20. No such motion shall be made until after a copy of the Bill and a copy of the statement of objects and reasons have been furnished to each member. Any member may object to the motion unless such copies have been furnished to him at least seven days previously; and such objection shall prevail unless the president, in exercise of his power to suspend any of these rules, allows the motion to be made.

21. On the day on which such motion is made, or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed.

22. When any motion mentioned in Rule 19 is carried, the Bill shall, together with a statement of its objects and reasons, if not already published on a motion under Rule 18, be published in English in the Gazette of India.

The Bill and statement shall also, if publication has not already been directed, be published in such official gazettes and in such vernacular languages (if any) as the council in each case decides to be necessary for the purpose of giving notice to the communities affected by the Bill.

For this purpose the council shall make an order at the meeting at which such motion is carried, and may from time to time, on the motion of any member, vary or cancel such order.

23. The governor-general, if he see fit, may order the publication of a Bill, together with the statement of objects and reasons which accompanies it, in such gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill.

In that case it shall not be necessary to move for leave to introduce the Bill; and, if the Bill be afterwards introduced, it shall not be necessary to publish it again.

iv. *Select Committees.*

24. The law member shall be a member of every select committee.

The other members of every committee shall be named by

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the council when the Bill is referred, or at any subsequent meeting.

The law member, and in his absence the member in charge of the Bill, shall be chairman of the committee, and in the case of an equality of votes the chairman shall have a second or casting vote.

25. After publication of a Bill in the Gazette of India, the select committee to which the Bill may have been referred shall make a report thereon.

Such report shall be made not sooner than three months from the date of the first publication in the Gazette of India, unless the council orders the report to be made sooner.

Reports may be either preliminary or final.

The select committee shall in their report state whether or not, in their judgement, the Bill has been so altered as to require republication, whether the publication ordered by these rules or by the council has taken place, and the date on which the publication has taken place, or, where publication in more than one gazette or in more than one language is ordered, the date on which the publication in each such gazette and each such language has taken place.

If, in the judgement of the committee, the Bill has been so altered as to require republication, the secretary shall send a copy of the altered Bill to the secretary of the department to which it pertains.

When the committee recommend the republication of a Bill which was originally ordered by these rules or by the council to be published in more than one gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be republished in every such gazette and every such language.

If the committee are of opinion that it is unnecessary to republish the Bill in any such gazette or in any such language, they shall, in their report, state the grounds of their opinion.

26. The secretary shall cause every report of a select

committee to be printed, and shall send a copy of such report to each member, and shall cause the report, with the amended Bill, to be published in the Gazette of India.

If any member present is unacquainted with English, the secretary shall also, if requested, cause the report to be translated into Hindustani for his use.

27. The report of the select committee on a Bill shall be presented to the council by the member in charge of the Bill, and shall be taken into consideration by the council as soon as conveniently may be; but any member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the report; and such objection shall prevail, unless the president, in exercise of his power to suspend any of these rules, allows the report to be taken into consideration.

v. *Consideration and Amendments of Bills.*

28. When a Bill is taken into consideration by the council, any member may propose an amendment of such Bill.

29. If notice of such amendment has not been sent to the secretary at least three days before the meeting of the council at which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the president, in exercise of his power to suspend any of these Rules, allows the amendment to be moved.

The secretary shall, if time permits, cause every notice of amendment to be printed, and send a copy for the information of each member.

If any member present is unacquainted with English, the secretary shall also, if requested, cause every such notice to be translated into Hindustani for his use.

30. Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate.

31. Notwithstanding anything in the foregoing rules, it shall be in the discretion of the president, when a motion that

a Bill be taken into consideration has been carried, to submit the Bill or any part of the Bill to the council section by section. When this procedure is adopted, the president shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question 'that this section, or (as the case may be) this section as amended, stand part of the Bill.'

32. Any member may move that a Bill which has been amended by the council or by a select committee be republished or recommitted, and, if the council so decide, the president may order the bill to be republished or recommitted, as the case may be.

33. If no amendment be made when a Bill is taken into consideration by the council, the Bill may at once be passed.

If any amendment be made, any member may object to the passing of the Bill at the same meeting; and such objection shall prevail, unless the president, in exercise of his power to suspend any of these rules, allows the Bill to pass.

Where the objection prevails, the Bill shall be brought forward again at a future meeting, and may then be passed with or without further amendment.

vi. *Passing of Bills and Publication of Acts.*

34. When a Bill is passed by the council, a copy thereof shall be signed by the president, and, when the governor-general has declared his assent thereto, such copy shall be signed by the governor-general, and the Bill shall be published as soon as possible in the official gazettes, under the signature of the secretary, as an Act of the Governor-General in Council.

Such publication shall be made in the Gazette of India in English, and in the official gazettes of the local Governments in English and in such vernacular languages spoken in the territories subject to such Governments respectively as may be ordered by the council or directed by the local Government:

Provided that, when the Act does not apply to the whole

of British India, it shall be published only in the Gazette of India and in the gazettes of the local Governments to whose territories it applies.

vii. *Duties of Secretary.*

35. At least two days before each meeting of the council, the secretary shall send to each member a list of the business to be brought forward at such meeting.

Subject to the provisions of Rule 29, no business shall be entered by the secretary in a list, unless notice thereof has been given to him at least three days before the meeting of the council to which the list relates: provided that business may be added to the list at any time before a meeting under the special orders of the president.

36. The secretary shall keep a journal, in which all the proceedings of the council shall be fairly entered.

The journal shall be submitted after each meeting to the president for his confirmation and signature, and, when so signed, shall be the record of the proceedings of the council.

37. The secretary shall also cause to be prepared a full report of the proceedings of the council at each of its meetings, and publish it in the Gazette of India as soon as practicable. He shall send a copy of such report to each member, and also to the Permanent Under-Secretary of State for India.

38. In addition to the other duties specially required by these rules, it shall be the duty of the secretary—

(1) To draft all Bills originated by the Government of India, the statements of their objects and reasons, and the reports of the select committee to which such Bills are referred;

(2) To take charge of the copies of the Bills signed by the governor-general and of all the other records of the council;

(3) To keep the books of the council;

(4) To keep a list of the business for the time being before the council;

(5) To superintend the printing of all papers printed in pursuance of these rules;

(6) To assist the council and all committees in such manner as they may direct;

(7) To send to the secretary of the department to which the Bill pertains, any Bill which an additional member has obtained leave to introduce under Rule 16;

(8) To examine all Bills deposited by additional members, and report to the president on those which contain clauses trenching on subjects coming within section 19 or section 22 of the Indian Councils Act, 1861;

(9) To write all letters which the council or the president, or any select committee, or the law member, directs to be written.

39. It shall be the duty of the secretary to cause to be translated into Hindustani Bills, statements of objects and reasons, reports of select committees, and amendments of Bills; to cause papers to be explained to members unacquainted with English, and otherwise to assist them in such manner as they may require.

viii. *Miscellaneous.*

40. Strangers may be admitted into the council chamber during the sittings of the council on the order of the president.

Application for orders of admission is to be made to the secretary.

41. The president, on the motion of any member, may direct at any time during a sitting of the council that strangers withdraw.

42. Any paper relating to any measure before the council may be published by order of the president.

Copies of papers so published shall be sold at such rates as may be fixed by the secretary.

43. Any Bill respecting which no motion has been made

in the council for two years may, by order of the president, be removed from the list of business.

44. The president, for sufficient reason, may suspend any of the foregoing rules.

II.—Rules as to the Nomination of Additional Members of Legislative Councils.

1. *Governor-General's Council.*

Simla, June 23, 1893.

In exercise of the power conferred by section 1, sub-section 4, of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), the Governor-General in Council has, with the approval of the Secretary of State for India in Council, made the following regulations for the nomination of additional members of the council of the Governor-General of India.

1. Of the persons to be nominated additional members of council by the governor-general for his assistance in making laws and regulations not more than six shall be officials.

2. The nominations to five seats shall be made by the governor-general on the recommendation of the following bodies respectively, namely:—

(1) The non-official additional members of the council of the Governor of the Presidency of Fort St. George.

(2) The non-official additional members of the council of the Governor of the Presidency of Bombay.

(3) The non-official members of the council of the Lieutenant-Governor of the Bengal Division of the Presidency of Fort William in Bengal.

(4) The non-official members of the council of the Lieutenant-Governor of the North-Western Provinces and Oudh.

(5) The Calcutta Chamber of Commerce.

3. The governor-general may at his discretion nominate

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persons to such of the remaining seats as shall not be filled by officials in such manner as shall appear to him most suitable with reference to the legislative business to be brought before the council and the due representation of the different classes of the community.

4. When a vacancy occurs, and is to be filled under Rule 2 of these regulations, the governor-general shall cause the proper body to be requested to recommend a person for nomination by the governor-general.

5. The recommendation shall be made—

(1) In the case of the non-official additional members or non-official members of a local council, by a majority of votes of such members;

(2) In the case of the Calcutta Chamber of Commerce, in the manner laid down in the rules of the Chamber for carrying resolutions or recording decisions upon questions of business brought before it.

6. It shall be a condition in the case of any person to be recommended by the non-official additional members or non-official members of a local council that he shall be a person ordinarily resident within the province for which such council is appointed.

7. If within two months after receiving the request of the governor-general, as provided by Rule 4, the body fails to make a recommendation, the governor-general may nominate at his discretion a person belonging to the province or class which the body is deemed to represent.

8. If the governor-general shall decline to nominate any person who has been under these regulations recommended for nomination, a fresh request shall be issued as provided in Rule 4, and the procedure laid down in Rules 5 and 7 shall apply.

9. (*a*) As soon as conveniently may be after these regulations come into force, five of the seats held by non-official persons shall be filled up by recommendation under Rule 2.

(*b*) If there shall not be the full number of five vacancies

available at once for this purpose, the governor-general shall determine at his discretion which of the bodies of groups mentioned in Rule 2 shall be requested to recommend the persons to fill up such vacancies as may then be available; and so whenever and as often as any further vacancies among non-official members become available, until the full number of five has been completed.

2. Madras Council.

1. Of the persons, other than the advocate-general or officer acting in that capacity, to be nominated additional members of council by the Governor of Madras for his assistance in making laws and regulations, not more than nine shall be officials.

2. The nomination to seven seats shall be made by the governor on the recommendation of the following bodies and associations respectively, namely:—

A. The Corporation of Madras;

B. Such municipal corporations, or group or groups of municipal corporations, other than the Corporation of Madras, as the Governor in Council may from time to time prescribe by notification in the Fort St. George Gazette;

C. Such district boards, or group or groups of district boards, as the Governor in Council may from time to time prescribe as aforesaid;

D. Such association or associations of merchants, manufacturers, or tradesmen as the Governor in Council may from time to time prescribe as aforesaid;

E. The Senate of the University of Madras.

Provided that the bodies described above under A, B, C, D, and E respectively shall each (except as hereinafter provided in Rule 7) have at least one person nominated upon its recommendation, and A, D, and E not more than one each.

3. The governor may, at his discretion, nominate persons to such of the remaining seats as shall not be filled by officials

in such manner as shall in his opinion secure a fair representation of the different classes of the community; provided that one seat shall ordinarily be held by a zemindar paying not less than Rs. 20,000 as *peshkash* annually to the Government.

4. When a vacancy occurs and is to be filled under Rule 2 of these regulations, the governor shall cause the proper body or group of bodies, or association or associations, to be requested to recommend a person for nomination by the governor.

5. The recommendation shall be made—

(*a*) In the case of a municipal corporation or of a district board, or of the Senate of the University, by a majority of votes of the corporation, board, or senate respectively;

(*b*) In the case of associations not established by law, in the manner laid down in their rules or articles of association for carrying resolutions or recording decisions upon questions of business brought before the associations;

(*c*) In the case of a group of municipal corporations, district boards, or associations, by the majority of votes of representatives to be appointed, according to such scale as the Governor in Council may from time to time prescribe, by the corporations, boards, or associations.

6. It shall be a condition in the case of any person to be recommended by a municipal corporation or group of municipal corporations that he shall be a person ordinarily resident within the municipality or the district in which it is situated, or in some one of the municipalities constituting the group, or of the districts in which they are situated. A similar condition shall also apply to persons to be recommended by district boards.

7. If within two months after receiving the request of the governor, as provided by Rule 4, the body or association, or group of bodies or associations, fails to make a recommendation, the governor may nominate, at his discretion, a person belonging to the class which the body or association or group is deemed to represent.

8. If the governor shall decline to nominate any person

who has been, under these regulations, recommended for nomination, a fresh request shall be issued, as provided in Rule 4, and the procedure laid down in Rules 5 and 7 shall apply.

9. (*a*) As soon as conveniently may be after these regulations come into force, seven of the seats held by non-official persons shall be filled up by recommendation under Rule 2.

(*b*) If there shall not be the full number of seven vacancies available at once for this purpose, the governor shall determine, at his discretion, subject always to the proviso in Rule 2, which of the bodies or groups mentioned in that rule shall be requested to recommend the persons to fill up such vacancies as may then be available; and so whenever and as often as any further vacancies among non-official members become available, until the full number of seven has been completed.

3. *Bombay Council.*

1. Of the persons, other than the advocate-general, or officer acting in that capacity, to be nominated additional members of council by the Governor of Bombay for his assistance in making laws and regulations, not more than nine shall be officials.

2. The nomination to eight seats shall be made by the governor on the recommendation of the following bodies and associations respectively, namely:—

A. The Corporation of Bombay;

B. Such municipal corporations, or group or groups of municipal corporations, other than the Corporation of the city of Bombay, as the Governor in Council may from time to time prescribe by notification in the Bombay Government Gazette;

C. Such district local boards, or group or groups of district local boards, as the Governor in Council may from time to time prescribe as aforesaid;

D. The sardárs of the Deccan, or such other class of large

landholders as the Governor in Council may from time to time prescribe as aforesaid;

E. Such association or associations of merchants, manufacturers, or tradesmen as the Governor in Council may from time to time prescribe as aforesaid;

F. The Senate of the University of Bombay.

Provided that the bodies described above under A, B, C, D, E, and F respectively shall each (except as hereinafter provided in Rule 7) have at least one person nominated upon its recommendation, and A and F not more than one each.

3. The governor may, at his discretion, nominate persons to such of the remaining seats as shall not be filled by officials, in such manner as shall in his opinion secure a fair representation of the different classes of the community.

4. When a vacancy occurs, and is to be filled under Rule 2 of these regulations, the governor shall cause the proper body or group of bodies, or association or associations, to be requested to recommend a person for nomination by the governor.

5. The recommendation shall be made—

(*a*) In the case of a municipal corporation or of a district local board, or of the sardárs of the Deccan, or such other class of large landowners as the Governor in Council may from time to time prescribe, or of the Senate of the University, by a majority of votes of the corporation, board, body, or senate respectively;

(*b*) In the case of associations not established by law, in the manner laid down in their rules or articles of association for carrying resolutions or recording decisions upon questions of business brought before the association;

(*c*) In the case of a group of municipal corporations, district local boards, or associations, by the majority of votes of representatives to be appointed, according to such scale as the Governor in Council may from time to time prescribe, by the corporations, boards, or associations.

6. It shall be a condition in the case of any person to be recommended by a municipal corporation, or group of muni-

cipal corporations, that he shall be a person ordinarily resident within the municipality or the district in which it is situated, or in some one of the municipalities constituting the group, or of the districts in which they are situated. A similar condition shall also apply to persons to be recommended by district local boards.

7. If within two months after receiving the request of the governor, as provided by Rule 4, the body or association, or group of bodies or associations, fails to make a recommendation, the governor may nominate, at his discretion, a person belonging to the class which the body or association or group is deemed to represent.

8. If the governor shall decline to nominate any person who has been, under these regulations, recommended for nomination, a fresh request shall be issued, as provided in Rule 4, and the procedure laid down in Rules 5 and 7 shall apply.

9. (*a*) As soon as conveniently may be after these regulations come into force, eight of the seats held by non-official persons shall be filled up by recommendation under Rule 2.

(*b*) If there shall not be the full number of eight vacancies available for this purpose, the governor shall determine, at his discretion, subject always to the proviso in Rule 2, which of the bodies or groups mentioned in that rule shall be requested to recommend the persons to fill up such vacancies as may then be available; and so whenever and as often as any other vacancies among non-official members become available, until the full number of eight has been completed.

4. *Bengal Council.*

1. The Lieutenant-Governor of Bengal has been authorized by the proclamation of the Governor-General in Council in the Home Department, No. 354, dated March 16, 1893, to nominate twenty councillors for his assistance in making laws and regulations. Of these twenty councillors, not more than ten shall be officials.

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2. The nominations to seven seats shall be made by the lieutenant-governor on the recommendation of the following bodies and associations respectively, namely :—

A. The Corporation of Calcutta;

B. Such municipal corporations, or group or groups of municipal corporations, other than the Corporation of Calcutta, as the lieutenant-governor may from time to time prescribe by notification in the Calcutta Gazette;

C. Such district boards, or group or groups of district boards, as the lieutenant-governor may from time to time prescribe as aforesaid;

D. Such association or associations of merchants, manufacturers, or tradesmen as the lieutenant-governor may from time to time prescribe as aforesaid;

E. The Senate of the University of Calcutta.

Provided that the bodies described above under A, B, C, D, and E respectively shall each (except as hereinafter provided in Rule 7) have at least one councillor nominated upon its recommendation, and A, D, and E not more than one each.

3. The lieutenant-governor may, at his discretion, nominate persons to such of the remaining seats as shall not be filled by officials in such manner as shall in his opinion secure a fair representation of the different classes of the community; provided that one seat shall ordinarily be held by a representative of the great landowners of the province.

4. When a vacancy occurs, and is to be filled under Rule 2 of these regulations, the lieutenant-governor shall cause the proper body or group of bodies, or association or associations, to be requested to recommend a person for nomination by the lieutenant-governor.

5. The recommendation shall be made—

(*a*) In the case of a municipal corporation or of a district board, or of the Senate of the University, by a majority of votes of the corporation, board, or senate respectively;

(*b*) In the case of associations not established by law, in the manner laid down in their rules or articles of association for carrying resolutions or recording decisions upon questions of business brought before the association;

(*c*) In the case of a group of municipal corporations, district boards, or associations, by the majority of votes of representatives to be appointed, according to such scale as the lieutenant-governor may from time to time prescribe, by the corporations, boards, or associations.

6. It shall be a condition in the case of any person to be recommended by a municipal corporation, or group of municipal corporations, that he shall be a person ordinarily resident within the municipality or district in which it is situated, or in some one of the municipalities constituting the group, or of the districts in which they are situated. A similar condition shall also apply to persons to be recommended by district boards.

7. If within two months after receiving the request of the lieutenant-governor, as provided by Rule 4, the body or association, or group of bodies or associations, fails to make a recommendation, the lieutenant-governor may nominate, at his discretion, a person belonging to the class which the body or association or group is deemed to represent.

8. If the lieutenant-governor shall decline to nominate any person who has been, under these regulations, recommended for nomination, a fresh request shall be issued, as provided in Rule 4, and the procedure laid down in Rules 5 and 7 shall apply.

9. (*a*) As soon as conveniently may be after these regulations come into force, seven of the seats held by non-official persons shall be filled up by recommendation under Rule 2.

(*b*) If there shall not be the full number of seven vacancies available at once for this purpose, the lieutenant-governor shall determine, at his discretion, subject always to the proviso in Rule 2, which of the bodies or groups mentioned in that rule shall be requested to recommend the persons to fill up

such vacancies as may then be available; and so whenever and as often as any further vacancies among non-official councillors become available, until the full number of seven has been completed.

5. *North-Western Provinces and Oudh Council.*

1. The Lieutenant-Governor of the North-Western Provinces and Oudh has been authorized by the proclamation of the Governor-General in Council in the Home Department, No. 355, dated March 16, 1893, to nominate fifteen councillors for his assistance in making laws and regulations. Of these fifteen councillors, not more than seven shall be officials.

2. The nominations to six seats shall be made by the lieutenant-governor on the recommendation of the following bodies and associations respectively, namely :—

A. Such municipal boards or committees, or group or groups of municipal boards or committees, as the lieutenant-governor may from time to time prescribe by notification in the Government Gazette for the North-Western Provinces and Oudh.

B. Such district boards, or group or groups of district boards, or association or associations of landholders (whether landlords or tenants) as the lieutenant-governor may from time to time prescribe as aforesaid;

C. Such association or associations of merchants, manufacturers, or tradesmen as the lieutenant-governor may from time to time prescribe as aforesaid;

D. The Senate of the University of Allahabad.

Provided that the bodies described above under A, B, C, and D respectively shall each (except as hereinafter provided in Rule 7) have at least one councillor nominated upon its recommendation, and C and D not more than one each.

3. The lieutenant-governor may, at his discretion, nominate persons to such of the remaining seats as shall not be filled by officials in such manner as shall in his opinion secure a fair representation of the different classes of the community.

4. When a vacancy occurs and is to be filled under Rule 2 of these regulations, the lieutenant-governor shall cause the proper body or group of bodies, or association or associations, to be requested to recommend a person for nomination by the lieutenant-governor.

5. The recommendation shall be made—

(*a*) In the case of a municipal board or committee, or of a district board, or of the Senate of the University, by a majority of votes of the board, committee, or senate respectively;

(*b*) In the case of associations not established by law, in the manner laid down in their rules or articles of association for carrying resolutions or recording decisions upon questions of business brought before the association.

(*c*) In the case of a group of municipal boards or committees, district boards, or associations, by the majority of votes of representatives to be appointed, according to such scale as the lieutenant-governor may from time to time prescribe, by the boards, committees, or associations.

6. It shall be a condition in the case of any person to be recommended by a municipal board or committee, or group of municipal boards or committees, that he shall be a person ordinarily resident within the municipality or the district in which it is situated, or in some one of the municipalities constituting the group, or of the districts in which they are situated. A similar condition shall also apply to persons to be recommended by district boards.

7. If within two months after receiving the request of the lieutenant-governor, as provided by Rule 4, the body or association, or group of bodies or associations, fails to make a recommendation, the lieutenant-governor may nominate, at his discretion, a person belonging to the class which the body or association or group is deemed to represent.

8. If the lieutenant-governor shall decline to nominate any person who has been, under these regulations, recommended for nomination, a fresh request shall be issued, as provided in

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9. (*a*) As soon as conveniently may be after these regulations come into force, six of the seats held by non-official persons shall be filled up by recommendation under Rule 2.

(*b*) If there shall not be the full number of six vacancies available at once for this purpose, the lieutenant-governor shall determine, at his discretion, subject always to the proviso in Rule 2, which of the bodies or groups mentioned in that rule shall be requested to recommend the persons to fill up such vacancies as may then be available; and so whenever and as often as any further vacancies among non-official councillors become available, until the full number of six has been completed.

III.—Rules as to the Discussion of the Financial Statement and the Asking of Questions.

Calcutta, February 2, 1893.

In exercise of the power conferred by section 2 of the statute 55 & 56 Vict. c. 14 (the Indian Councils Act, 1892), the following rules have been made by the Governor-General of India in Council, authorizing at any meeting of the governor-general's council for the purpose of making laws and regulations the discussion of the annual financial statement of the Governor-General in Council and the asking of questions; the rules have received the sanction of the Secretary of State for India in Council, and are now published for general information :—

i. *Preliminary.*

1. In these rules—

'Council' means the council of the Governor-General of India for the purpose of making laws and regulations:

'President' means the governor-general or (during the time of his visit to any part of India unaccompanied by his

council) the president nominated by the Governor-General in Council under the Indian Councils Act, 1861, section 6; or, in the absence of both the governor-general and the president so nominated, the senior ordinary member of council present.

'Member' means a member of the council, whether ordinary, extraordinary, or additional.

ii. *Rules for the Discussion of the Annual Financial Statement of the Governor-General in Council.*

2. The financial statement shall be explained in council every year, and a printed copy given to each member.

3. After the explanation has been made each member shall be at liberty to offer any observations he may wish to make on the statement.

4. The financial member shall have the right of reply, and the discussion shall be closed by the president making such observations, if any, as he may consider necessary.

iii. *Rules for asking Questions.*

5. Any question may be asked by any member, subject to the following conditions and restrictions :—

6. A member who wishes to ask a question shall give at least six clear days' notice in writing to the secretary to the Government of India in the Legislative Department, submitting in full the question which he wishes to ask.

7. Questions must be so framed as to be merely requests for information, and must not be in an argumentative or hypothetical form, or defamatory of any person or section of the community.

8. The president may disallow any question without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests; and in such case the question shall not be entered in the Proceedings of the council.

9. The president may, if he thinks fit, allow a question

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to be asked with shorter notice than six days; and may in any case require longer notice if he thinks fit, or extend, if necessary, the time for answering a question.

10. When the president has permitted a question to be asked, it shall be entered in the notice paper for the day, and questions shall be put in the order in which they stand in the notice paper before any other business is entered upon at the meeting.

11. A question shall be read by the member by whom it was framed, or in his absence, if he so desires, by some other member in his behalf, and the answer shall be given by the member in charge of the department concerned or by some other member whom the president may designate for the purpose.

12. The president may also rule, at his discretion, that an answer to a question on the notice paper, even though the question be not put, shall be given on the ground of public interest.

13. No discussion shall be permitted in respect of an answer given to a question asked under these rules.

14. The question asked and the answer given to it shall be entered in the Proceedings of the council.

CHAPTER V

CHARTERS OF THE INDIAN HIGH COURTS

I.—Letters Patent for the High Court of Judicature at Fort William in Bengal, bearing date December 28, 1865.

[N.B.—The Letters Patent for the High Courts at Madras and Bombay, of the same date, are precisely the same, except as noted at foot[1].]

Recital of Act 24 & 25 Vict. c. 104.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our Reign, intituled 'An Act for establishing High Courts of Judicature in India,' it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at [Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid[2]], and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always, that the persons who at the time of the establishment of such High Court were Judges

[1] All these Letters Patent are printed in the Statutory Rules and Orders Revised, vol. iv. pp. 82 sqq.

[2] *Madras*: 'Madras, for the Presidency of Madras aforesaid.' *Bombay*: 'Bombay, for the Presidency of Bombay aforesaid.'

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of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewânny Adawlut and [Sudder Nizamut Adawlut at Calcutta[1]], in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency-town, as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the [fourteenth day of May[2]], in the twenty-fifth year of Our

[1] *Madras*: 'Foujdari Adawlut at Madras.' *Bombay*: 'Sudder Foujdari Adawlut at Bombay.'

[2] *Madras and Bombay*: 'Twenty-sixth day of June.'

Reign, in the year of Our Lord one thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at [Fort William in Bengal, for the Bengal Division of the Presidency of Fort William [1]] aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at [Fort William in Bengal [2]], and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain that the said High Court of Judicature at [Fort William in Bengal [2]] should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and [thirteen [3]] Judges, and did thereby, [in addition to the persons who at the time of the establishment of the said High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut, in the said Presidency respectively [4]], constitute and appoint certain [other [4]] persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court:

[And whereas on the thirtieth day of January, one thousand eight hundred and sixty-three, We did in the manner in the said recited Act provided direct and ordain that the said High Court should consist of a Chief Justice and fourteen Judges [5]:]

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court

24 & 25 Vict. c. 104, s. 17.

[1] *Madras*: 'Madras, for the Presidency of Madras.' *Bombay*: 'Bombay, for the Presidency of Bombay.'

[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[3] *Madras*: 'five.' *Bombay*: 'six.'

[4] *Madras and Bombay*: Omitted.

[5] *Madras*: Omitted. *Bombay*: 'And whereas on the sixth day of July, one thousand eight hundred and sixty-three, We did, in accordance with the provisions of the said recited Act, increase the number of the Judges of the said Court to a Chief Justice and seven Judges.'

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was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

28 Vict. c. 15.

And whereas by the Act of the twenty-eighth year of Our Reign, chapter fifteen, entitled 'An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts,' the time for issuing fresh Letters Patent has been extended to the first of January, one thousand eight hundred and sixty-six:

And whereas in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the [fourteenth of May[1]], one thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

Revocation of Letters Patent of 1862.

1. Now know ye that We, upon full consideration of the premises, and of Our especial grace, certain knowledge and mere motion, have thought fit to revoke and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the [fourteenth of May[1]], one thousand eight hundred and sixty-two, except so far as the Letters Patent of the [fourteenth year of His Majesty King George the Third, dated the twenty-sixth of March, one thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal[2]], were revoked or determined thereby.

[1] *Madras and Bombay*: 'twenty-sixth of June.'

[2] *Madras*: 'Forty-first year of His Majesty King George the Third, dated the twenty-sixth of December, one thousand eight hundred, establishing a Supreme Court of Judicature at Madras.' *Bombay*: 'Fourth year of His Majesty King George the Fourth, dated the eighth day of December, one thousand eight hundred and twenty-three, establishing a Supreme Court of Judicature at Bombay.'

High Court at [Fort William [2]] to be continued.

2. And We do by these presents grant, direct and ordain that, notwithstanding the revocation of the said Letters Patent of the [fourteenth of May[1]], one thousand eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at [Fort William in Bengal [2]] shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at [Fort William in Bengal, for the Bengal Division of the Presidency of Fort William [3]] aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

Judges of the said High Court to be continued.

3. And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or Acting Chief Justice or Judges, if any, of the said High Court of Judicature at [Fort William in Bengal [2]] shall continue to be the Chief Justice and Judges, or Acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

Clerks, &c., of the said High Court to be continued.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at [Fort William in Bengal [2]] appointed by virtue of the

[1] *Madras and Bombay*: 'twenty-sixth of June.'

[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[3] *Madras*: 'Madras, for the Presidency of Madras.' *Bombay*: 'Bombay, for the Presidency of Bombay.'

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said Letters Patent of the [fourteenth of May [1]], one thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations and provisions as if he were appointed by virtue of these Letters Patent.

Declaration to be made by Judges.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be, from time to time, appointed to the said High Court of Judicature at [Fort William in Bengal [2]], previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the [Governor-General in Council [3]] may commission to receive it:—

'I, *A. B.*, appointed Chief Justice [*or* a Judge] of the High Court of Judicature at [Fort William in Bengal [2]], do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgement.'

Seal.

6. And We do hereby grant, ordain and appoint that the said High Court of Judicature at [Fort William in Bengal [2]] shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal arms, with an exergue or label surrounding the same, with this inscription: 'The Seal of the High Court at [Fort William in Bengal [2]].' And We do further grant, ordain and appoint that the said seal shall be delivered to, and kept in the custody of, the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said

24 & 25 Vict. c. 104, s. 7.

[1] *Madras and Bombay*: 'twenty-sixth of June.'
[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'
[3] *Madras and Bombay*: 'Governor in Council.'

seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

Writs, &c., to issue in name of the Crown, and under seal.

7. And We do hereby further grant, ordain and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at [Fort William in Bengal[1]] shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

Appointment of officers.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at [Fort William in Bengal[1]], from time to time as occasion may require, and subject to any rules and restrictions which may be prescribed by the [Governor-General in Council[2]], to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the [Governor-General in Council[2]], and shall be either confirmed or disallowed by the [Governor-General in Council[2]]. And it is Our further will and pleasure, and We do hereby for Us, Our heirs and successors, give, grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the [Governor-General in Council[3]] shall approve of: Provided always and it is Our

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Madras and Bombay*: 'Governor in Council.'

[3] *Madras and Bombay*: 'Governor in Council, subject to the control of the Governor-General in Council.'

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will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the [Governor-General in Council [1]] and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakils, and Attorneys.

Powers of High Court in admitting Advocates, Vakils, and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at [Fort William in Bengal [2]] to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

In making rules for the qualifications, &c., of Advocates, Vakils, and Attorneys.

10. And We do hereby ordain that the said High Court of Judicature at [Fort William in Bengal [2]] shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

[1] *Madras and Bombay*: 'Governor in Council.'
[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

Local limits of the ordinary original jurisdiction of the High Court.

11. And We do hereby ordain that the said High Court of Judicature at [Fort William in Bengal[1]] shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by [competent legislative authority for India[2]], and until some local limits shall be so declared and prescribed, within the limits [declared and prescribed by the proclamation fixing the limits of Calcutta issued by the Governor-General in Council on the tenth day of September, in the year of our Lord one thousand seven hundred and ninety-four[3],] and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

Original jurisdiction as to suits.

12. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal[1]], in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits: except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at [Calcutta[1]] in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Madras and Bombay*: 'the Governor in Council.'

[3] *Madras and Bombay*: 'of the local jurisdiction of the said High Court of Madras / Bombay at the date of the publication of these presents.'

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Extra-ordinary original civil jurisdiction.

13. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal[1]] shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the [Bengal Division of the Presidency of Fort William[2]], subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

Joinder of several causes of action.

14. And We do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. 24 & 25 Vict. c. 104, s. 13.

15. And We do further ordain that an appeal shall lie to the said High Court of Judicature at [Fort William in Bengal[1]] from the judgement (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgement, not being a sentence or order (as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgements of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Madras*: 'Presidency of Madras.' *Bombay*: 'Presidency of Bombay.'

successors, in Our or their Privy Council, as hereinafter provided.

Appeal from Courts in the Provinces.

16. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall be a Court of Appeal from the Civil Courts of the [Bengal Division of the Presidency of Fort William [2]] and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

Jurisdiction as to infants and lunatics.

17. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the [Bengal Division of the Presidency of Fort William [3]] as that which was vested in the said High Court immediately before the publication of these presents.

Provision with respect to the Insolvent Court.

18. And We do further ordain that the Court for relief of insolvent debtors at [Calcutta [1]] shall be held before one of the Judges of the said High Court of Judicature at [Fort William in Bengal [1]], and the said High Court, and any such Judge thereof, shall have and exercise, within the [Bengal Division of the Presidency of Fort William [2]], such powers and authorities with respect to original and appellate jurisdiction and otherwise, as are constituted by the laws relating to insolvent debtors in India.

Law to be administered by the High Court [of Judicature at Fort William in Bengal [4]].

By the High Court in

19. And We do further ordain that with respect to the law or equity to be applied to each case coming before the said

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'
[2] *Madras*: 'Presidency of Madras.' *Bombay*: 'Presidency of Bombay.'
[3] *Madras*: 'Presidency of Madras.' *Bombay*: Bombay Presidency.'
[4] *Madras and Bombay*: Omitted.

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the exercise of ordinary original civil jurisdiction.

High Court of Judicature at [Fort William in Bengal [1]], in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

In the exercise of extraordinary original civil jurisdiction.

20. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at [Fort William in Bengal [1]], in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

By the High Court in the exercise of appellate jurisdiction.

21. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at [Fort William in Bengal [1]] to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

Ordinary original jurisdiction of the High Court.

22. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; [and also in respect of all such persons, both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal shall have

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

criminal jurisdiction over at the date of the publication of these presents [1].

Jurisdiction as to persons.

23. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [2]], in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

Extraordinary original criminal jurisdiction.

24. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [2]] shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at [Fort William in Bengal [2]] from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

Court may reserve points of law.

High Court to review on certificate of the Advocate-General.

26. And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgement, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said

[1] *Madras* : 'and also in respect of all such persons beyond such limits over whom the said High Court of Judicature at Madras shall have criminal jurisdiction at the date of the publication of these presents.' *Bombay* (as amended by Act XXIII of 1866) : 'and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents.'

[2] *Madras* : 'Madras.' *Bombay* : 'Bombay.'

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Court shall[1] be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgement and sentence as to the said High Court shall seem right.

Appeals from Criminal Courts in the Provinces.

27. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal[2]] shall be a Court of appeal from the Criminal Courts of the [Bengal Division of the Presidency of Fort William[3]] and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

Hearing of referred cases and revision of criminal trials.

28. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal[2]] shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session Judges, or by any other officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction as are now subject to reference to or revision by the said High Court.

High Court may direct the transfer of a case from one Court to another.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

[1] *Sic.* 'Should' in the Madras and Bombay Letters: *read* 'should' in the Bengal Letters.

[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[3] *Madras*: 'Presidency of Madras.' *Bombay*: 'Presidency of Bombay.'

Criminal Law.

Offenders to be punished under Indian Penal Code.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at [Fort William in Bengal [1]], either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the Indian Penal Code, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

XLV of 1860.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

Judges may be authorized to sit in any places by way of circuit or special commission.

31. And We do further ordain that whenever it shall appear to the [Governor-General in Council [2]] convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at [Fort William in Bengal [1]] should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

Civil.

32. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall have and exercise all such civil and maritime jurisdiction as may now be exer-

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'
[2] *Madras and Bombay*: 'Governor in Council.'

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cised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

Criminal.

33. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connexion with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

Testamentary and intestate jurisdiction.

34. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal [1]] shall have the like power and authority as that which may now be lawfully exercised by the said High Court [except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent [2]], in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the [said Bengal Division, subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established [3]]: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'
[2] *Madras and Bombay*: Omitted.
[3] *Madras*: 'Presidency of Madras.' *Bombay*: 'Presidency of Bombay.'

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

35. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal[1]] shall have jurisdiction, within the [Bengal Division of the Presidency of Fort William[2]], in matters matrimonial between our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of Single Judges and Division Courts.

Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at [Fort William in Bengal[1]], in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or [by[3]] any Division Court thereof, appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our Reign; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

24 & 25 Vict. c. 104, s. 13.

Civil Procedure.

Regulation of proceedings.

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at [Fort William in Bengal[1]] from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Madras*: 'Presidency of Madras.' *Bombay*: 'Presidency of Bombay.'

[3] *Bombay*: Omitted.

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may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate, and matrimonial jurisdiction respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859[1], and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

VIII of 1859.

Criminal Procedure.

Regulation of proceedings.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at [Fort William in Bengal[2]], in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861[3], or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

XXV of 1861.

Appeals to Privy Council.

Power to appeal.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their

[1] See now Act XIV of 1882.

[2] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[3] See now Act X of 1882.

Privy Council, in any matter not being of criminal jurisdiction, from any final judgement, decree, or order of the said High Court of Judicature at [Fort William in Bengal[1]] made on appeal, and from any final judgement, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the fifteenth clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgement, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgement, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgements.

40. And We [do[2]] further ordain that it shall be lawful for the said High Court of Judicature at [Fort William in Bengal[1]] at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgement, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Bombay*: Omitted.

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against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgements, decrees, orders, and sentences.

Appeal [in] criminal cases, &c.

41. And We do further ordain that from any judgement, order, or sentence of the said High Court of Judicature at [Fort William in Bengal[1]] made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgement, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Rule as to transmission of copies of evidence and other documents.

42. And We do further ordain that in all cases of appeal made from any judgement, order, sentence, or decree of the said High Court of Judicature at [Fort William in Bengal[1]] to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgements, decrees, and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgement or determination appealed against, and We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

cause to be executed, such judgements and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises in such manner as any original judgement, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, &c., by the Government.

High Court to comply with requisition from Government for records, &c.

43. And it is Our further will and pleasure that the said High Court of Judicature at [Fort William in Bengal[1]] shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian legislature preserved.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

24 & 25 Vict. c. 67.

Provisions of former Letters Patent inconsistent with these Letters Patent to be void.

45. And it is Our further will and pleasure that these Letters Patent [shall[2]] be published by the [Governor-General in Council[3]] and shall come into operation from and after the date of such publication[4]; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King George the [Third[5]] as was not revoked or determined by the said Letters Patent of the [fourteenth of May[6]], one thousand eight hundred and sixty-two, and is

[1] *Madras*: 'Madras.' *Bombay*: 'Bombay.'

[2] *Madras*: 'Should.'

[3] *Madras and Bombay*: 'Governor in Council.'

[4] The Bengal Letters were published on April 2, 1886; the Madras Letters on March 12, 1866.

[5] *Bombay*: 'Fourth.' [6] *Madras and Bombay*: 'twenty-sixth of June.'

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inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the twenty-eighth day of December in the twenty-ninth year of Our Reign.

By warrant under the Queen's Sign Manual.

(*Signed*) . C. ROMILLY.

II.—LETTERS PATENT FOR THE HIGH COURT OF JUDICATURE IN THE NORTH-WESTERN PROVINCES, BEARING DATE MARCH 17, 1866.

Recital of Act 24 & 25 Vict. c. 104.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our Reign, intituled 'An Act for establishing High Courts of Judicature in India,' it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always, that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment

of such High Court as aforesaid the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta, in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the said Presidencies, as We from time to time might think fit and appoint; and that subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts, and to the Chief Justice and other Judges of such Courts, and to the Governor-General or Governor of the Presidency in which such High Courts

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were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the government of the said territories:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of Our Lord one thousand eight hundred and sixty-two, did accordingly for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record:

Establishment of High Court for the North-Western Provinces.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our heirs and successors, erect and establish, for the North-Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature for the North-Western Provinces, and We do hereby constitute the said Court to be a Court of Record.

Constitution and first Judges of the High Court.

2. And We do hereby appoint and ordain that the said High Court of Judicature for the North-Western Provinces shall, until further or other provision shall be made by Us, or Our heirs and successors in that behalf, in accordance with the said recited Act, consist of a Chief Justice and five Judges, the first Chief Justice being Walter Morgan, Esquire, and the five Judges being Alexander Ross, Esquire, William Edwards, Esquire, William Roberts, Esquire, Francis Boyle Pearson, Esquire, and Charles Arthur Turner, Esquire, being respectively qualified as in the said Act is declared.

Declaration to be made by Judges.

3. And We do hereby ordain that the Chief Justice and every Judge of the said High Court of Judicature for the North-Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it:—

'I, *A. B.*, appointed Chief Justice [*or* a Judge] of the High Court of Judicature for the North-Western Provinces, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgement.'

Seal.

4. And We do hereby grant, ordain, and appoint that the said High Court shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription: 'The Seal of the High Court for the North-Western Provinces.' And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain, and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

24 & 25 Vict. c. 104, s. 7.

Writs, &c., to issue in name of the Crown, and under seal.

5. And We do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs

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and successors, and shall be sealed with the seal of the said High Court.

Appointment of officers.

6. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature for the North-Western Provinces, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor of the North-Western Provinces, and shall be either confirmed or disallowed by the said Lieutenant-Governor. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time appoint for each office and place respectively, and as the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakils, and Attorneys.

Powers of High Court in

7. And We do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces

admitting Advocates, Vakils, and Attorneys.

to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys, as to the said High Court shall seem meet; and such Advocates, Vakils, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

In making rules for the qualifications, &c., of Advocates, Vakils, and Attorneys.

8. And We do hereby ordain that the said High Court of Judicature for the North-Western Provinces shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law; and no person whatsoever but such Advocates, Vakils, or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

Extraordinary original jurisdiction.

9. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court[1].

Appeal from the Courts of original jurisdiction to

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature for the North-Western Provinces from the judgement (not being a sentence or order

[1] The Court does not possess ordinary civil jurisdiction.

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the High Court in its appellate jurisdiction. 24 & 25 Vict. c. 104, s. 13.

passed or made in any criminal trial) of one Judge of the said High Court or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgement (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgements of Judges of the said High Court, or of such Division Court, in such case shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided.

Appeal from Courts in the Provinces.

11. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of Appeal from the Civil Courts of the North-Western Provinces, and from all other Courts to which there is now an appeal to the Sudder Dewanny Adawlut, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

Jurisdiction as to infants and lunatics.

12. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the North-Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force.

Law to be administered by the High Court of Judicature for the North-Western Provinces.

By the High Court in the exercise of extra-

13. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature for the North-Western Provinces in the exercise of its extraordinary original civil jurisdiction, such

law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

Ordinary original civil jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the North-Western Provinces, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

By the High Court in the exercise of appellate jurisdiction.

Criminal Jurisdiction.

15. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents; and the criminal jurisdiction of the said last-mentioned High Court over such persons shall cease at such date: Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last-mentioned High Court shall continue as if these presents had not been issued.

Ordinary original jurisdiction of the High Court.

16. And We do further ordain that the said High Court of Judicature for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

Jurisdiction as to persons.

17. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such

Extraordinary original criminal jurisdiction.

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persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction.

18. And We do further ordain that there shall be no appeal to the said High Court from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

Courts may reserve points of law.

High Court to review cases on points of law reserved by one or more judges of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgement and sentence as to the said High Court shall seem right.

Appeals from Criminal Courts in the Provinces.

20. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of appeal from the Criminal Courts of the said Provinces, and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force.

Hearing of referred cases, and revision of criminal trials.

21. And We do further ordain that the said High Court shall be a court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session Judges, or by any other officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North-Western Provinces, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as are now subject to reference to or revision by the said Court of Sudder Nizamut Adawlut.

22. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

High Court may direct the transfer of a case from one Court to another.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North-Western Provinces either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the 'Indian Penal Code,' or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Offenders to be punished under Indian Penal Code.

XLV of 1860.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

24. And We do further ordain that whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the Sudder Dewanny Adawlut or the Sudder Nizamut Adawlut of the North-Western Provinces, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places

Judges may be authorized to sit in any places by way of circuit or special commission.

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shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Testamentary and Intestate Jurisdiction.

Testamentary and intestate jurisdiction.

25. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority as that which is now lawfully exercised within the said Provinces by the said High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate; and that the jurisdiction of the said last-mentioned High Court in relation thereto shall cease from the date of the publication of these presents: Provided always, that any proceedings already commenced in relation to any of the matters aforesaid in the said last-mentioned High Court shall continue as if these presents had not been issued: Provided also, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

26. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have jurisdiction, within the said Provinces, in matters matrimonial between Our subjects professing the Christian religion: Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Provinces lawfully possessed thereof.

Powers of Single Judges and Division Courts.

Single Judge and Division Courts.

27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North-Western Provinces, in the exercise of its original or appellate jurisdiction, may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our Reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

24 & 25 Vict. c. 104, s. 13.

Civil Procedure.

Regulation of proceedings.

28. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces from time to time to make rules and orders for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859[1], and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate, and matrimonial jurisdiction respectively.

VIII of 1859.

Criminal Procedure.

Regulation of proceedings.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort

[1] See now Act XIV of 1882.

CH. V. William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861[1], or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

XXV of 1861.

Appeals to Privy Council.

Power to appeal.

30. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgement, decree, or order of the said High Court of Judicature for the North-Western Provinces made on appeal, and from any final judgement, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the tenth clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgement, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgement, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further

[1] See now Act X of 1882.

rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from interlocutory judgements.

31. And We further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgement, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgements, decrees, orders, and sentences.

Appeal in criminal cases, &c.

32. And We do further ordain that from any judgement, order, or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgement, order, or sentence to appeal to Us, Our heirs or successors, in Council: Provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Rule as to transmission of copies of evidence and other documents.

33. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature for the North-Western Provinces to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings,

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judgements, decrees, and orders had or made, in such cases, appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgement or determination appealed against. And We do further ordain that the said High Court shall in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgements and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgement, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, &c., by the Government.

High Court to comply with requisition from Government for records, &c.

34. And it is Our further will and pleasure that the said High Court of Judicature for the North-Western Provinces shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian legislature preserved.

35. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

24 & 25 Vict. c. 67.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the seventeenth day of March in the twenty-ninth year of Our Reign.

By warrant under the Queen's Sign Manual.

(*Signed*) C. ROMILLY.

CHAPTER VI

APPLICATION OF ENGLISH LAW TO NATIVES OF INDIA [1]

Introduction of English law into India.

ENGLISH law was introduced into India by the charters under which courts of justice were established for the three presidency towns of Madras, Bombay, and Calcutta. The charters introduced the English common and statute law in force at the time, so far as it was applicable to Indian circumstances. The precise date at which English law was so introduced has been a matter of controversy. For instance, it has been doubted whether the English statute of 1728, under which Nuncomar was hung, was in force in Calcutta at the time of his trial, or of the commission of his offence. So also

[1] This chapter is based on a paper read before the Society of Comparative Legislation in 1896.

Among the most accessible authorities on the subject of this chapter are Harington's Analysis of the Bengal Regulations, Beaufort's Digest of the Criminal Law of the Presidency of Fort William, the introduction to Morley's Digest of Indian Cases, the editions published by the Indian Legislative Department of the Statutes relating to India, of the general Acts of the Governor-General in Council, and of the Provincial Codes, and the Index to the enactments relating to India (of which a new edition has just been published). The numerous volumes of reports by Select Committees and by the Indian Law Commissioners contain a mine of information which has never been properly worked.

The best books on existing Hindu law are those by Mr. J. D. Mayne and by West (Sir Raymond) and Bühler, written from the Madras and Bombay points of view respectively. Sir R. K. Wilson has recently published a useful Digest of Anglo-Mahomedan Law. Reference should also be made to the series of Tagore Law Lectures. Mr. C. L. Tupper and Sir W. H. Rattigan have written on the customary law of the Punjab. I have seen some notes on the Buddhist law of Burma by Mr. Justice Jardine, but they do not appear to have been published.

CH. VI. there has been room for argument as to whether particular English statutes, such as the Mortmain Act, are sufficiently applicable to the circumstances of India as to be in force there[1]. But Indian legislation, and particularly the enactment of the Indian Penal Code, has set at rest most of these questions.

Charter of 1753. George II's charter of 1753, which reconstituted the mayors' courts in the three presidency towns of Madras, Bombay, and Calcutta, expressly excepted from their jurisdiction all suits and actions between the Indian natives only, and directed that such suits and actions should be determined among themselves, unless both parties should submit them to the determination of the mayor's court. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court[2].

Warren Hastings' 'Plan' of 1772. It was not, however, until the East India Company took over the active administration of the province of Bengal that the question of the law to be applied to natives assumed a seriously practical form. In 1771 the Court of Directors announced their intention of 'standing forth as Diwan'; in other words, of assuming the administration of the revenues of the province, a process which involved the establishment, not merely of revenue officers, but of courts of civil and criminal justice. In the next year Warren Hastings became Governor of Bengal, and one of his first acts was to lay down a plan for the administration of justice in the interior of Bengal. What laws did he find in force? In criminal cases the Mahomedan Government had established its own criminal law, to the exclusion of that of the Hindus. But in civil cases

[1] The question is discussed at length in Mr. Whitley Stokes's preface to the first edition of The Older Statutes relating to India, reprinted in his Collection of Statutes relating to India (Calcutta, 1881). See also the *Mayor of Lyons* v. *East India Company*, 3 State Trials, N. S., 647, and the other authorities cited in note (*a*) to s. 108 of the Digest.

[2] Morley's Digest, Introduction, p. clxix.

Mahomedans and Hindus respectively were governed by their personal laws, which claimed divine authority, and were enforced by a religious as well as by a civil sanction.

Gradual modification of criminal law.

The object of the East India Company was to make as little alteration as possible in the existing state of things. Accordingly, the country courts were required, in the administration of criminal justice, to be guided by Mahomedan law. But it soon appeared that there were portions of the Mahomedan law which no civilized Government could administer. It was impossible to enforce the law of retaliation for murder, of stoning for sexual immorality, or of mutilation for theft, or to recognize the incapacity of unbelievers to give evidence in cases affecting Mahomedans. The most glaring defects of Mahomedan law were removed by regulations, and an interesting picture of the criminal law, so patched and modified, as it was administered in the country courts of Bengal about the year 1821, is given in Mr. Harington's Analysis of the Bengal Regulations[1]. The process of repealing, amending, and supplementing the Mahomedan criminal law by enactments based on English principles went on until the Mahomedan law was wholly superseded by the Indian Penal Code in 1860[2]. A general code of criminal procedure followed in 1861, and the process of superseding native by European law, so far as the administration of criminal justice is concerned, was completed by the enactment of the Evidence Act of 1872.

Observance of native rules as to family law.

With respect to civil rights, Warren Hastings' plan of 1772 directed, by its twenty-third rule, that 'in all suits regarding marriage, inheritance, and caste, and other[3] religious usages and institutions, the laws of the Koran with respect to

[1] See also Sir R. K. Wilson's Introduction to Anglo-Mahomedan Law, p. 113; and for a description of the criminal law of India as it existed in 1852, see the evidence given in that year by Mr. F. Millett before the Select Committee of the House of Lords on the East India Company's Charter.

[2] It had been previously superseded, in 1827, by a written code in the Bombay Presidency (Morley, Digest, Introduction, pp. cliv, clxxvi).

[3] The use of 'other' implies that marriage and inheritance were treated as religious institutions.

CH. VI. Mahomedans, and those of the Shaster with respect to Gentus (Hindus) shall be invariably adhered to.' 'Moulavies or Brahmins' were directed to attend the courts for the purpose of expounding the law and giving assistance in framing the decrees[1].

The famous 'Regulating Act' of 1773 empowered the Governor-General and Council of Bengal to make rules, ordinances, and regulations for the good order and civil government of the settlement at Fort William (Calcutta) and other factories and places subordinate thereto, and in 1780 the Government of Bengal exercised this power by issuing a code of regulations for the administration of justice, which contained a section (27) embodying the provisions and exact words of Warren Hastings' regulation. A revised code of the following year re-enacted this section with the addition of the word 'succession.'

The English Act of 1781 (21 Geo. III, c. 70), which was passed for amending and explaining the Regulating Act, recognized and confirmed the principles laid down by Warren Hastings.

Whilst empowering the Supreme Court at Calcutta to hear and determine all manner of actions and suits against all and singular the inhabitants of Calcutta, it provided (s. 17) that 'their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of the Mahomedans, and in the case of Gentus (Hindus) by the laws and usages of Gentus; and where one only of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant.' It went on to enact (s. 18) that 'in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, shall be preserved to them respectively

[1] This direction was repealed by Act XI of 1864.

within their said families; nor shall any acts done in consequence of the rule and law of caste respecting the members of the said families only be held and adjudged a crime, although the same may not be held justifiable by the laws of England.' Enactments to the same effect have been introduced into numerous subsequent English and Indian enactments [1].

These provisions of the Act of 1781, and the corresponding provisions of the Act of 1797 relating to the recorders' courts of Madras and Bombay (afterwards superseded by the supreme courts, and now by the high courts), are still in force, but are not included in the list of English statutory provisions which, under the Indian Councils Act of 1861 (24 & 25 Vict. c. 67), Indian legislatures are precluded from altering. Consequently they are alterable, and have in fact been materially affected, by Indian legislation. For instance, the native law of contract has been almost entirely superseded by the Contract Act of 1872 and other Acts. And the respect enjoined for the rights of fathers and masters of families and for the rules of caste did not prevent the Indian legislature from abolishing domestic slavery or suttee.

The Lex Loci Act.

A Bengal regulation of 1832 (VII of 1832), whilst re-enacting the rules of Warren Hastings which had been embodied in previous regulations, qualified their application by a provision which attracted little attention at the time, but afterwards became the subject of considerable discussion [2]. It declared that these rules 'are intended and shall be held to apply to such persons only as shall be *bona fide* professors of those religions at the time of the application of the law

[1] See e.g. 37 Geo. III, c. 142 (relating to the recorders' courts at Madras and Bombay), ss. 12, 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab), as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1889, s. 4 (Lower Burma); and clauses 19 and 20 of the Charter of 1865 of the Bengal High Courts, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

[2] See Morley's Digest, Introduction, pp. clxxiii, clxxxiii.

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to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suits may be of different persuasions, where one party shall be of the Hindu and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindu persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles.'

In the year 1850 the Government of India passed a law (XXI of 1850) of which the object was to extend the principle of this regulation throughout the territories subject to the government of the East India Company. It declared that 'So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or [1] property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company, and in the courts established by Royal charter within the said territories.'

This Act, which was known at the time of its passing as the Lex Loci Act [2], and is still in force, excited considerable

[1] An attempt has recently been made to argue that this phrase was an accidental misprint for 'rights *of* property.' But there seems no foundation for this suggestion.

[2] This title is a misnomer. It was properly applied to other provisions which were subsequently dropped. See the evidence of Mr. Cameron before the Select Committee of the House of Lords in 1852.

opposition among orthodox Hindus as unduly favouring converts, and has quite recently been criticized from the Hindu point of view with respect to its operation on the guardianship of children in a case where one of two parents had been converted from Hinduism to Mahomedanism.

Law applicable to persons neither Hindus nor Mahomedans.

It will have been observed that Warren Hastings' rule and the enactments based upon it apply only to Hindus and Mahomedans. There are, of course, many natives of India who are neither Hindus nor Mahomedans, such as the Portuguese and Armenian Christians, the Parsees, the Sikhs, the Jains, the Buddhists of Burma and elsewhere, and the Jews. The tendency of the courts and of the legislatures has been to apply to these classes the spirit of Warren Hastings' rule and to leave them in the enjoyment of family law, except so far as they have shown a disposition to place themselves under English law.

Rules as to local usage in Bombay and the Punjab.

When Mountstuart Elphinstone legislated for the territories then recently annexed to the Bombay Presidency, Anglo-Indian administrators had become aware that the sacred or semi-sacred text-books were not such trustworthy guides as they had been supposed to be in the time of Warren Hastings, and that local or personal usages played a much more important part than had previously been attributed to them. Accordingly, the Bombay regulation deviated from the Bengal model by giving precedence to local usage over the written Mahomedan or Hindu law[1]. Regulation IV of 1827 (s. 26), which is still in force in the Bombay Presidency, directed that 'The law to be observed in the trial of suits shall be Acts of Parliament and regulations of Government applicable to the case; in the absence of such Acts and regulations, the usage of the country in

[1] Sir R. K. Wilson, Introduction to Anglo-Mahomedan Law, p. 121. It is also important to observe that the Mahomedan criminal law had not been introduced into the territories under Bombay to anything like the same extent as into Bengal. See on this subject the Judicial Letters from Bombay of July 29, 1818, pars. 186 seq., printed in the Reports to Parliament on East India Affairs for the year 1819.

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which the suit arose; if none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone.' The same principle has since been applied to the Punjab, which is pre-eminently the land of customary law, and where neither the sacred text-books of the Hindus nor those of the Mahomedans supply a safe guide to the usages actually observed. In this province the Punjab Laws Act[1] expressly directs the courts to observe any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been altered or abolished by law, or declared by competent authority to be void.

Native Christians and Armenians,

Native Christians have for the most part placed themselves, or allowed themselves to be placed, under European law. As long ago as 1836 the Armenians of Bengal presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they added, 'As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered[2], your petitioners humbly submit that the law of England is the only one that can, upon any sound principle, be allowed to prevail[3].'

Parsees.

The Parsees have obtained the enactment of an intestate succession law of their own (XXI of 1865).

Justice, equity, and good conscience.

In matters for which neither the authority of Hindu or Mahomedan text-books or advisers nor the regulations and other enactments of the Government supplied sufficient guidance, the judges of the civil courts were usually directed to act in accordance with 'justice, equity, and good conscience.' An Englishman would naturally interpret these words as meaning such rules and principles of English law as he happened to know and considered applicable to the

[1] IV of 1872, s. 5, as altered by XII of 1878, s. 1.

[2] This, of course, is merely the statement of the Bengal Armenians of 1836. See Dareste, Études d'Histoire du Droit, pp. 119 sqq.

[3] Morley's Digest, Introduction, p. clxxxvii.

case; and thus, under the influence of English judges, native law and usage were, without express legislation, largely supplemented, modified, and superseded by English law.

State of law at passing of Charter Act of 1833.

The inquiries and reports which preceded the Charter Act of 1833 directed attention to the unsatisfactory condition of the law in British India at that time, and, in particular, to the frequent difficulty of ascertaining what the law was and where it was to be found. The judges of the Calcutta Supreme Court, after describing generally the state of the law, went on to say: 'In this state of circumstances no one can pronounce an opinion or form a judgement, however sound, upon any disputed right of persons respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the Indian system as to know readily and familiarly the bearings of each part of it on the rest. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not at all. There is the English Common Law and Constitution, of which the application is in many respects still more obscure and perplexed; Mahomedan Law and Usage; Hindu Law, Usage, and Scripture; Charters and Letters Patent of the Crown; regulations of the Government, some made declaredly under Acts of Parliament particularly authorizing them, and others which are founded, as some say, on the general power of Government entrusted to the Company by Parliament, and as others assert on their rights as successors of the old Native Governments; some regulations require registry in the Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one presidency or one town. There are commissions of the Governments, and circular orders from the Nizamut Adawlut, and from the Dewanny Adawlut; treaties of the Crown; treaties of the Indian Government; besides

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inferences drawn at pleasure from the application of the "*droit public*," and the law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force [1].'

First Indian Law Commission.

It was for the purpose of remedying this unsatisfactory state of things that an Indian Law Commission was appointed under the Charter Act of 1833, with Macaulay at its head. The commission sat for many years, and produced several volumes of reports, which in some cases supplied the basis of Indian legislation. But it was not until 1860 that the Indian Penal Code, its most important achievement, was placed on the Indian Statute Book. The first edition of the Code of Civil Procedure had been passed in 1859, and the first edition of the Code of Criminal Procedure was passed in 1861 [2]. The law of procedure has been supplemented by the Evidence Act (I of 1872) and the Limitation Act (XV of 1877), and by the Specific Relief Act (I of 1877), which stands on the borderland of substantive and adjective law. These Acts apply to all persons in British India, whether European or native, and wholly displace and supersede native law on the subjects to which they relate.

Penal Code, Codes of Civil and Criminal Procedure, &c.

But when the time came for codifying the substantive civil law, it was found necessary to steer clear of, and make exceptions with respect to, important branches of native law.

Indian Succession Act.

The Indian Succession Act, 1865 (X of 1865), which is based on English law, is declared by s. 2 to constitute, subject to certain exceptions, the law of British India applicable to all cases of intestate or testamentary succession. But the exceptions are so wide as to exclude almost all natives of India. The provisions of the Act are declared (s. 331) not to apply to the property of any Hindu, Mahomedan, or Buddhist. And the Government of India is empowered (s. 332) to exempt by executive order from the operation of the whole or any part of the Act the members of any race, sect, or tribe in British

[1] See Hansard (1833), xviii. 729.

[2] These are now represented by Acts XIV and X of 1882.

India, to whom it may be considered impossible or inexpedient to apply those provisions. Two classes of persons have availed themselves of this exemption—Native Christians in Coorg, and Jews in Aden. The former class wished to retain their native rules of succession, notwithstanding their conversion to Christianity. The Jews of British India had agreed to place themselves under the Act, but it was not until some twenty years after the Act had become law that the Jews of Aden, who lived in a territory which is technically part of British India, but who still observed the Mosaic law of succession[1], discovered that they were subject to a new law in the matter of succession. They petitioned to be released from its provisions, and were by executive order remitted to the Pentateuch.

The operation of the Indian Succession Act has, however, been extended by subsequent legislation.

Oudh Estates Act.

The Oudh Estates Act, 1889 (I of 1869), expressly enabled the taluqdars of Oudh to dispose of their estates by will, and applied certain provisions of the Indian Succession Act to their wills.

Hindu Wills Act.

The Hindu Wills Act (XXI of 1870) applied certain of its provisions—

(1) To all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after September 1, 1870, within the territories subject to the Lieutenant-Governor of Bengal, or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature of Madras and Bombay; and

(2) To all such wills and codicils made outside those territories and limits so far as relates to immovable property situated within those territories or limits.

But nothing in the Act is to

(3) Authorize a testator to bequeath property which he could not have alienated *inter vivos*; or

[1] See the rulings in Zelophehad's case, Numbers xxvii. 6, xxxvi. 1; and the chapter on Le Droit Israélite in Dareste, Études d'Histoire du Droit.

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(4) Deprive any persons of any right of maintenance of which, but for the Act, he could not deprive them by will; or

(5) Affect any law of adoption or intestate succession; or

(6) Authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before September 1, 1870.

Probate and Administration Act.

The Probate and Administration Act, 1881 (V of 1881), which extends to the whole of British India, applies most of the rules in the Succession Act, 1865, with respect to probate and letters of administration, to the case of every Hindu, Mahomedan, Buddhist, and person exempted under s. 332 of the Indian Succession Act, dying on or after April 1, 1881 (s. 2).

The same section provides that a court is not to receive application for probate or letters of administration until the local Government has, with the previous sanction of the Governor-General in Council by notification in the official 'Gazette,' authorized it so to do. Such notifications have been since given by the local Governments. The Act, however, is merely a permissive measure, and authorizes, but does not require, application for probate or administration. And it must be remembered that Hindus do not, as a rule, make wills.

Indian Contract Act.

The Indian Contract Act (IV of 1872) does not cover the whole field of contract law, but, so far as it extends, is general in its application, and supersedes the native law of contract. However, it contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed, and for any usage or custom of trade or incident of contract not inconsistent with its provisions. The saving for statutes has been held to include the enactment of George III, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu

law have maintained their footing in the last part of British India where they might have been expected to survive[1].

Negotiable Instruments Act.

The Negotiable Instruments Act, 1881, which corresponds to and formed the precedent for the English Bills of Exchange Act, extends to the whole of British India, but is declared (s. 1) not to affect any local usage relating to any instrument in an Oriental language. It therefore preserves the customary rules as to the construction and effect of 'hundis,' or native bills of exchange and promissory notes, except so far as those rules are excluded by the agreement of the parties[2].

Transfer of Property Act.

The Transfer of Property Act, 1882, which lays down rules with respect to the sale, gift, exchange, mortgage, and leasing of land, and on other points supplements the Contract Act, does not apply to the Punjab or to Burma (except the town of Rangoon); and, within the parts of India to which it extends, it reserves, or keeps in operation, native rules and customs on certain important subjects. For instance, nothing in the Act is to affect the provisions of any enactment not thereby expressly repealed, e.g. the Indian Acts which expressly save local usages in the Punjab and elsewhere. And nothing in the second chapter, which relates to the transfer of property by the act of parties, is to affect any rule of Hindu, Mahomedan, or Buddhist law (s. 2). The provisions as to mortgages recognize and regulate forms of security in accordance with native as well as English usage. Local usages with respect to apportionment of rents and other periodical payments (s. 36), mortgages (s. 98), and leases (ss. 106, 108), are expressly saved. And finally, there is a general declaration (s. 117) that none of the provisions of the chapter relating to leases are to apply to leases for agricultural purposes, except so far as they may be applied thereto by the local Government, with the sanction of the

[1] See note (*a*) to s. 108 of Digest.

[2] It is said, however, that the Indian banks refuse to discount hundis unless the parties agree to be bound by the Act.

CH. VI. Government of India. Thus the application of these provisions is confined within very narrow limits. The law relating to the tenure of agricultural land is mostly regulated by special Acts, such as the Bengal Tenancy Act (VIII of 1885), and the similar Acts for other provinces.

Trusts Act. The Indian Trusts Act, 1882 (II of 1882), which codifies the law of trusts, does not apply to the province of Bengal or to the Presidency of Bombay. And nothing in it is to affect the rules of Mahomedan law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or to apply to public or private religious or charitable endowments (s. 1).

Easements Act. The Indian Easements Act, 1882 (V of 1882), which is in force in most parts of India outside Bengal[1], also embodies principles of English law, but is not to derogate from certain Government and customary rights (s. 1).

Guardian and Wards Act. The Guardian and Wards Acts, 1890 (VIII of 1890), which declares the law with respect to the appointment, duties, rights, and liabilities of guardians of minors[2], provides (s. 6) that, in the case of a minor who is not a European British subject, nothing in the Act is to be construed as taking away or derogating from any power to appoint a guardian which is valid by the law to which the minor is subject. And in the appointment of a guardian the court is, subject to certain directions, to be guided by what, *consistently with the law to which the minor is subject*, appears in the circumstances to be for the welfare of the minor (s. 17).

Law of torts. The law of torts or civil wrongs, as administered by the courts of British India, whether to Europeans or to natives, is practically English law. The draft of a bill to codify it

[1] Its operation was extended by Act VIII of 1891.

[2] The age of majority for persons domiciled in British India is by Act IX of 1875 (as amended by s. 52 of Act VIII of 1890) fixed at eighteen, except where before the attainment of that age a guardian has been appointed for the minor by the court, or his property has been placed under the superintendence of the Court of Wards, in which case the minority lasts until twenty-one.

was prepared some years ago, but the measure has never been introduced.

Subjects to which English and native law respectively apply.

If we survey the whole field of law, as administered by the British Indian courts, and examine the extent to which it consists of English and of native law respectively, we shall find that Warren Hastings' famous rule, though not binding on the Indian legislatures, still indicates the class of subjects with which the Indian legislatures have been chary of interfering, and which they have been disposed to leave to the domain of native law and usage.

The criminal law and the law of civil and criminal procedure are based wholly on English principles. So also, subject to some few exceptions[1], are the law of contract and the law of torts, or civil wrongs.

But within the domain of family law, including the greater part of the law of succession and inheritance, natives still retain their personal law, either modified or formulated, to some extent, by Anglo-Indian legislation. Hindus retain their law of marriage, of adoption, of the joint family, of partition, of succession. Mahomedans retain their law of marriage, of testamentary and intestate succession, and of *wakf* or quasi-religious trusts. The important branch of law relating to the tenure of land, as embodied in the Rent and Revenue Acts and regulations of the different provinces, though based on Indian customs, exhibits a struggle and compromise between English and Indian principles.

Attempt to govern natives by native law, Englishmen by English law.

It will have been seen that the East India Company began by attempting to govern natives by native law, Englishmen by English law. This is the natural system to apply in a conquered country, or in a vassal State—that is to say, in a State where complete sovereignty has not been assumed by the dominant power. It is the system which involves the least disturbance. It is the system which was applied by

[1] e. g. the Mahomedan rules as to the right of pre-emption, which are expressly recognized by the Punjab Laws Act, 1872 (as amended by Act XII of 1878), and by the Oudh Laws Act, 1876.

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the barbarian conquerors of the provinces of the Roman Empire, and which gave rise to the system of personal law that plays so large a part in the long history of the decay of that empire. It appears to be the system now in force in Tunis, where the French have practically established an exclusive protectorate, and where French law appears to be administered by French courts to Frenchmen and European foreigners, and Mahomedan law by Mahomedan courts to the natives of the country. It is the system which is applied, with important local variations, in the British protectorates established in different parts of the world over uncivilized or semi-civilized countries. The variations are important, because the extent to which native laws and usages can be recognized and enforced depends materially on the degree of civilization to which the vassal State has attained.

Causes of its failure.

The system broke down in India from various causes.

In the first place there was the difficulty of ascertaining the native law.

Warren Hastings did his best to remove this difficulty by procuring the translation or compilation of standard text-books, such as the Hedaya, the Sirajiyah, and the Sharifyah for Mahomedan law, the Code of Manu, the Mitakshara, and the Dayabhaga for Hindu law, and by enlisting the services of native law officers as assessors of the Company's courts. His regulations were based on the assumption that the natives of India could be roughly divided into Mahomedans and Gentus, and that there was a body of law applicable to these two classes respectively. But this simple and easy classification, as we now know, by no means corresponds to the facts. There are large classes who are neither Mahomedans nor Hindus. There are various schools of Mahomedan law. There are Mahomedans whose rules of inheritance are based, not on the Koran, but on Hindu or other non-Mahomedan usages. Hinduism is a term of the most indefinite import. Different text-books are recognized as authoritative in different parts of India and among different classes of Hindus. Even

where they are so recognized, they often represent what the compiler thought the law ought to be rather than what it actually is or ever was. Local, tribal, caste, and family usages play a far larger part than had originally been supposed, and this important fact has been recognized in later Indian legislation.

Then, the native law, even where it could be ascertained, was defective. There were large and important branches of law, such as the law of contract, for which it supplied insufficient guidance. Its defects had to be supplied by English judges and magistrates from their remembrance, often imperfect, of principles of English law, which were applied under the name of justice, equity, and good conscience.

And lastly, native law often embodied rules repugnant to the traditions and morality of the ruling race. An English magistrate could not enforce, an English Government could not recognize, the unregenerate criminal law of Indian Mahomedanism.

Thus native law was eaten into at every point by English case law, and by regulations of the Indian legislatures.

Hence the chaos described in the passage quoted above from the report of the Calcutta judges.

Reason for codification.

This chaos led up to the period of codification, which was ushered in by Macaulay's Commission of 1833, and which, after the lapse of many years, bore fruit in the Anglo-Indian codes.

In India, as elsewhere, codification has been brought about by the pressure of practical needs. On the continent of Europe the growth of the spirit of nationality, and the consequent strengthening of the central Government and fusion of petty sovereignties or half-sovereignties, has brought into strong relief the practical inconvenience arising from the co-existence of different systems of law in a single State. Hence the French codes, the Italian codes, and the German codes. If codification has lagged behind in England,

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it has been largely, perhaps mainly, because England acquired a strong central Government, and attained to practical unity of law, centuries before any continental State [1].

Merits of Indian codes.

In India it became necessary to draw up for the guidance of untrained judges and magistrates a set of rules which they could easily understand, and which were adapted to the circumstances of the country. There has been a tendency, on the one hand, to overpraise the formal merits of the Indian codes, and on the other to underrate their practical utility as instruments of government. Their workmanship, judged by European standards, is often rough, but they are on the whole well adapted to the conditions which they were intended to meet. An attempt has been made to indicate in this chapter the extent to which they have supplanted or modified native law and custom.

How far codification applicable to native law.

It has often been suggested that the process of codification should be deliberately extended to native law, and that an attempt should be made, by means of codes, to define and simplify the leading rules of Hindu and Mahomedan law, without altering their substance. Sir Roland Wilson, in particular, has recently pleaded for the codification of Anglo-Mahomedan law. There is, however, reason to believe that he has much underrated the difficulties of such a task. Those difficulties arise, not merely from the tendency of codification to stereotype rules which, under the silent influence of social and political forces, are in process of change, but from the natural sensitiveness of Hindus and Mahomedans about legislative interference with matters closely touching their religious usages and observances, and from the impossibility in many cases of formulating rules in any shape which will meet with general acceptance. It is easy enough to find an enlightened Hindu or Mahomedan, like Sir Syed Ahmed Khan, who will testify to the general desire of the natives to have their laws codified. The difficulty begins when a

[1] See the article on Codification in the Encyclopaedia of the Laws of England.

particular code is presented in a concrete form. Even in the case of such a small community as the Khojas, who have contrived to combine adhesion to the Mahomedan creed with retention of certain Hindu customs, it has, up to this time, been found impossible to frame a set of rules of inheritance on which the leaders of the sect will agree. And any code not based on general agreement would either cause dangerous discontent or remain a dead letter. The misconceptions which have arisen about the recent Guardians and Wards Act, the authors of which expressly disavowed any intention of altering native law, illustrate the sensitiveness which prevails about such matters.

Codes and text-books.

And what, after all, is a code? It is a text-book enacted by the legislature. Several of the Anglo-Indian codes extend only to particular provinces of British India. But, as clear and accurate statements of the law, they possess much authority in the provinces to which they have not been formally extended. Indeed, it was Sir Henry Maine's view that the proper mode of codifying for India was to apply a code in the first instance to a particular province, where its enactment would meet with no opposition, and gradually extend its operation after the country had become familiarized with its contents, and accepted it as a satisfactory statement of the law. When this stage had been reached, what had been used as a text-book might be converted into a law. Now, the author of a text-book enjoys many advantages over the legislators who enact a code. He can guard himself by expressions such as 'it is doubtful whether' and 'there is authority for holding.' And he can correct any error or omission without going to the legislature. If a digest such as Sir Roland Wilson's obtains general acceptance with the courts which have to administer Anglo-Mahomedan law, it will supply an excellent foundation for a future code of that law. But the time for framing such a code has not yet arrived.

CHAPTER VII

BRITISH JURISDICTION IN NATIVE STATES

It seems desirable to consider, somewhat more fully than has been possible within the compass of the foregoing chapters, the powers of the Indian legislative, executive, and judicial authorities with respect to persons and things outside the territorial limits of British India, particularly in the territories of the Native States of India. For this purpose it may be convenient to examine, in the first instance, the principles applying to extra-territorial legislation in England, and then to consider what modifications those principles require in their application to India. This is the more important because the Indian Act regulating the exercise of extra-territorial jurisdiction was to a great extent copied from the English Act which had been passed for similar purposes.

Territorial character of Parliamentary legislation.

Parliamentary legislation is primarily territorial. An Act of Parliament prima facie applies to all persons and things within the United Kingdom, and not to any persons or things outside the United Kingdom[1]. In exercising its power to legislate for any part of the Queen's dominions Parliament is guided both by constitutional and by practical considerations. It does not legislate for a colony having responsible government, except on matters which are clearly Imperial in their nature, or are beyond the powers of the

[1] See *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430; Hardcastle on Statute Law (2nd edition), ch. vii.

colonial legislature. And, apart from constitutional considerations, it is reluctant to deal with matters which are within the competence of a local legislature.

Principles limiting extra-territorial legislation.

In dealing with persons and things outside the Queen's dominions Parliament is always presumed to act in accordance with the rules and principles of international law, and its enactments are construed by the courts accordingly. It would be contrary to the received principles of international law[1] regulating the relations between independent States for Parliament to pass a law punishing a foreigner for an offence committed on foreign territory, or setting up courts in foreign territory. It would not be contrary to those principles for Parliament to pass a law punishing a British subject for an offence committed in foreign territory, or giving English or other British courts jurisdiction in respect of offences so committed. But Parliament is reluctant, more reluctant than the legislatures of continental States, to legislate with respect to offences committed by British subjects in foreign territory. Its reluctance is based partly on the traditions and principles of English criminal law, as indicated by the averment that an offence is committed against the peace of the Queen, an expression inappropriate to foreign territory, and by the rules as to venue and local juries; partly on the practical inconvenience of withdrawing offences from the cognizance of local courts to a court at a distance from the scene of the offence and from the region in which evidence is most readily obtainable. The difficulty about evidence is felt more strongly by British courts than by the courts of

[1] i.e. to the principles of international law as understood and recognized by England and the United States. But continental States have asserted the right to punish foreigners for offences committed in foreign territories, especially for acts which attack the social existence of the State in question and endanger its security, and are not provided against by the penal law of the country in the territory of which they have taken place. Westlake, International Law, p. 127. And the principles of European international law cannot be applied, except with serious modifications, to States outside the European or Western family of nations.

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some other countries, where there is less reluctance to try offences on paper evidence [1].

These general principles appear to be consistent with the canons for the construction of statutes recently laid down in an important case [2]:—

'It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom. But whether it be confined in its operation to the United Kingdom, or whether, as is the case here [3], it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom, or in the Queen's dominions, as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without. One other general canon of construction is this—that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting. That is a rule based on international law, by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory.'

Cases in which Parliament legislates for offences committed out of British territory.

Under these circumstances the classes of cases in which Parliamentary legislation has given jurisdiction to British courts in respect of offences committed out of British territory are not numerous. The most important of them are as follows:—

(1) Offences committed at sea.

[1] As to the principles on which different States have exercised their powers of punishing offences committed abroad, see Heffter, Droit International (fourth French edition), p. 86, note G. Where an offender has escaped from the country in which the offence was committed he can often be handed over for trial under the Extradition Acts, 1870 to 1895, which apply as between British and foreign territory, or under the Fugitive Offenders Act, 1881, which applies as between different parts of the British dominions. Thus the procedure under these Acts often supplies a substitute for the exercise of extra-territorial jurisdiction.

[2] *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430, Judgement of Lord Russell, L.C.J., on demurrer to indictment.

[3] See 33 & 34 Vict. c. 90, s. 2.

(2) Treason.
(3) Murder and manslaughter.
(4) Slave trade offences.
(5) Offences against the Explosive Substances Act, 1883.
(6) Offences, such as forgery and perjury, committed abroad with reference to proceedings in some British court.
(7) Bigamy.
(8) Offences against certain provisions of the Foreign Enlistment Act, 1870.

Offences at sea.

(1) The exercise by English courts of jurisdiction in respect of offences committed on the high seas arises from the necessities of the case, i. e. from the absence of territorial jurisdiction. These offences, being committed outside the body of any English county, could not be dealt with by the ordinary criminal courts of the country, in the exercise of their ordinary criminal jurisdiction. They were originally dealt with by the court of the admiral, but are now, under various enactments, triable by ordinary courts of criminal jurisdiction as if committed within the local jurisdiction of those courts [1].

The jurisdiction extends to offences committed on board a British ship, whether the ship is on the open sea or in foreign territorial waters below bridges, and whether the offender is or is not a British subject or a member of the crew, and although there may be concurrent jurisdiction in a foreign court [2]. The principle on which Parliament exercises legislative, and the courts judicial, powers, is that a British ship is to be treated as if it were an outlying piece of British territory [3]. Theoretically, Parliament might, without bringing itself into conflict with the rules of international law, legislate

[1] See 4 & 5 Will. IV, c. 36, s. 22; 24 & 25 Vict. cc. 94 and 97; 57 & 58 Vict. c. 60, s. 684; and as to the Colonies, 12 & 13 Vict. c. 96.

[2] *R.* v. *Anderson*, L. R. 1 C. C. R. 161; *R.* v. *Carr*, 10 Q. B. D. 76. The rule is subject to modifications in the case of alien enemies, or aliens on board English ships against their will. See Stephen, History of the Criminal Law, ii. 4-8.

[3] The analogy is not complete. For instance, a British ship in foreign territorial waters is, or may be, subject to a double jurisdiction.

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in every case in respect of an offence committed by a British subject on board a foreign ship when on the high seas. But it has abstained from doing so in cases where the British subject is a member of the crew of the foreign ship, because he may be treated as having accepted foreign law for the time, and because of the practical difficulties which would arise if members of the same crew were subject to two different laws in respect of the same offence.

The principles on which Parliament has exercised its legislative powers with respect to offences on board ship are illustrated by ss. 686 and 687 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which run as follows :—

'686.—(1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas, or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

12 & 13 Vict. c. 96.

'(2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849.

'687. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence was committed is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishment respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

Section 689 gives powers of arrest, &c., in cases where jurisdiction may be exercised under s. 687.

It will be observed that s. 686 draws a distinction

between British subjects and others, and between British subjects who do, and those who do not, belong to a foreign ship. The terms in which s. 687 are expressed are very wide, and it is possible that English courts in construing them would limit their application with reference to the principles of international law. See the remarks in *R.* v. *Anderson*, where the case was decided independently of the enactment reproduced by this section[1].

Treason.

(2) Treason committed abroad is triable in England under an Act of 1543–4 (35 Henry VIII, c. 2). Treason, if committed in the territory of a foreign State, may very possibly not be an offence against the law of that State, and therefore not be punishable by the courts of that State.

Murder and manslaughter.

(3) Murder committed by a British subject in foreign territory was made triable in England under a special commission of oyer and terminer by an Act of Henry VIII (33 Henry VIII, c. 23). It was by a special commission under this Act that Governor Wall was, in 1802, tried and convicted of a murder committed in 1782[2]. The Act was extended by an Act of 1803 (43 Geo. III, c. 113, s. 6) to accessories before the fact and to manslaughter. Both these enactments were repealed by an Act of 1828 (9 Geo. IV, c. 31), which re-enacted their provisions with modifications as to procedure. The Act of 1828 was repealed and reproduced with modifications by an enactment in one of the consolidating Acts of 1861 (24 & 25 Vict. c. 100, s. 9), which is the existing law.

Slave trade offences.

(4) Offences against the Slave Trade Acts are triable by English courts if committed by any person within the Queen's dominions or by any British subject elsewhere (see 5 Geo. IV, c. 114, ss. 9, 10).

[1] Piracy by the law of nations, committed on the open sea, whether by a British subject or not, is triable by an English court under the criminal jurisdiction derived from the Admiralty. But this jurisdiction is not conferred by any special statute. As to what constitutes piracy *jure gentium*, see *Attorney-General for the Colony of Hong Kong* v. *Kwok-a-Sing*, L. R. 5 P. C. 179, 199 (1873), and Stephen, History of the Criminal Law, ii. 27.

[2] Stephen, History of the Criminal Law, ii. 2.

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Offences against Explosive Substances Act.

(5) Offences against the Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), i. e. offences by dynamiters, are triable by English courts when committed by any person in any part of the Queen's dominions or by any British subject elsewhere.

Forgery and perjury.

(6) Offences such as forgery and perjury, when committed with reference to proceedings in English courts, are triable by those courts (see, e. g., 52 & 53 Vict. c. 10, s. 9).

Bigamy.

(7) Under s. 57 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), bigamy is punishable in England or Ireland, whether the bigamous marriage has taken place in England or Ireland *or elsewhere*, but the section is not to extend to any second marriage contracted elsewhere than in England or Ireland by any other than a subject of Her Majesty.

Foreign Enlistment Act.

(8) The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), is declared by s. 2 to extend to all the dominions of Her Majesty, including the adjacent territorial waters, and some of its provisions, e. g. ss. 4, 7, extend to offences committed by any person being a British subject within or without Her Majesty's dominions. The construction and operation of this Act were commented on in the recent case of *R.* v. *Jameson*, [1896] 2 Q. B. 425.

Conclusions as to Parliamentary legislation for extra-territorial offences.

The conclusions to be drawn from the enactments and the reported decisions appear to be—

(1) It would not be consistent with the principles of international law regulating the relations between independent civilized States[1] for English courts to exercise, or for Parliament to confer, jurisdiction in respect of offences committed by foreigners in foreign territory. 'I am not aware,' says the late Mr. Justice Stephen, 'of any exception to the rule that crimes committed on land by foreigners out of the United Kingdom are not subject to the criminal law of England, except one furnished by the Merchant Shipping Act of 1854 (17 & 18 Vict. c. 104, s. 267). There may be exceptions

[1] But see the qualifying note above, p. 407.

in the orders made under the Foreign Jurisdiction Acts[1].'

(2) English courts are unwilling to exercise, and Parliament is unwilling to confer, jurisdiction in respect of offences committed by British subjects in foreign territory, except in special classes of cases.

With respect to offences committed in British territory and abetted in foreign territory, or vice versa, it is difficult to lay down any general proposition which does not require numerous qualifications.

In the case of felonies committed in England or Ireland and aided in foreign territory, the law is settled by the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94, s. 7), which enacts that where any felony has been completely committed in England or Ireland, the offence of any person who has been an accessory, either before or after the fact, to the felony, may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony, or any felonies committed in any county or place in which the act by reason whereof that person has become accessory has been committed; and in any other case the offence of an accessory to a felony may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the person being accessory is apprehended, or is in custody, whether the principal felony has been committed on the sea or on the land, or begun on the sea or completed on the land, or begun on the land or completed on the sea, and whether within Her Majesty's dominions, or without, or partly within Her Majesty's dominions, and partly without. But there is no similar comprehensive enactment with respect to misdemeanours,

[1] History of Criminal Law, ii. 12. Section 267 of the Act of 1854 is now represented by s. 687 of the Act of 1894 noticed above. As to the orders under the Foreign Jurisdiction Acts, see below, pp. 425, 434. There may also be an exception in the case of a breach of duty to the Crown committed abroad by a foreign servant of the Crown.

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and it is obvious that different considerations would apply in the case of such breaches of statutory regulations as are not necessarily offences by the law of another country.

As to offences committed in foreign territory and instigated or aided in England, questions of great importance and delicacy have arisen. These questions were raised in the famous case of *R.* v. *Bernard*[1], and are touched on by the late Mr. Justice Stephen in his History of Criminal Law. His conclusion is that, 'whatever may be the merits of the case legally, it seems to be clear that the legislature ought to remove all doubt about it by putting crimes committed abroad on the same footing as crimes committed in England, as regards incitement, conspiracy, and accessories in England. Exceptions might be made as to political offences, though I should be sorry if they were made wide.' The English legislature has, however, never gone so far as to adopt these conclusions in general terms, though it has declared the law in particular cases. Thus, with respect to murder and manslaughter, the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100, ss. 4, 9), has enacted in substance that persons who conspire in England to murder foreigners abroad, or in England incite people to commit murder abroad, or become in England accessories, whether before or after the fact, to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England.

As to theft, it was decided in 1861[2], on a question which arose under an Act of 1827 (7 & 8 Geo. IV, c. 29), that where goods are stolen abroad, e.g. in Guernsey, there could not be a conviction for receiving the goods in England, and this decision was considered applicable to cases under

[1] 1 Foster and Finlason, 240 (1858). This case, which arose out of the Orsini conspiracy, will be included in the forthcoming volume (vol. 8) of the State Trials, New Series.

[2] *Reg.* v. *Debruiel*, 11 Cox C. C. 207.

the Larceny Act, 1861 (24 & 25 Vict. c. 96), by which the Act of 1827 was replaced. This loophole in the criminal law has now been stopped by the Larceny Act, 1896 (59 & 60 Vict. c. 52), which punishes receipt in the United Kingdom of property stolen outside the United Kingdom. A similar question arose at Bombay in 1881[1] on the construction of ss. 410 and 411 of the Indian Penal Code; and it was held by the majority of the Court that certain bills of exchange stolen at Mauritius, where the Indian Penal Code was not in force, could not be regarded as stolen property within the meaning of s. 410 so as to make the person receiving them at Bombay liable under s. 411. In order to meet this decision, Act VIII of 1882 amended the definition of stolen property in s. 410 of the Penal Code by adding the words 'whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.' The arguments and judgements in the Bombay case deserve study with reference not merely to the existing state of the law, but to the principles on which legislation should proceed. Legislation with respect to offences committed in foreign territory and instigated or aided in British territory will require careful consideration, especially in its application to foreigners, and with reference to minor offences, which may be innocent acts under the foreign law.

Foreign Jurisdiction Acts.

Under the Orders in Council made in pursuance of the successive Foreign Jurisdiction Acts British courts have been established and British jurisdiction is exercised in numerous foreign territories in respect not only of British subjects, but of foreigners, i. e. in cases to which Parliamentary legislation would not ordinarily extend. But this jurisdiction, though recognized, confirmed, supported, and regulated by Acts of Parliament, derives its authority ultimately, not from Parliament, but from powers in-

[1] *Empress* v. *S. Moorga Chetty*, I. L. R. 5 Bom. 338.

CH. VII. herent in the Crown or conceded to the Crown by a foreign State[1].

Original of consular jurisdiction. The capitulations.

The jurisdiction arose historically out of the arrangements which have been made at various times between the Western Powers and the rulers of Constantinople. These arrangements date from a period long before the capture of Constantinople by the Turks. As far back as the ninth and tenth centuries the Greek Emperors of Constantinople granted to the Warings or Varangians from Scandinavia capitulations or rights of extra-territoriality, which gave them permission to own wharves, carry on trade, and govern themselves in the Eastern capital. The Venetians obtained similar capitulations in the eleventh century, the Amalfians in 1056, the Genoese in 1098, and the Pisans in 1110, and thenceforward they became extremely general. When the Turks took Constantinople they did little to interfere with the existing order of things, and the Genoese and Venetian capitulations were renewed[2]. The first of what may be called the modern capitulations was embodied in the Treaty of February, $153\frac{5}{6}$, between Francis I of France and Soliman the Magnificent. This treaty, although, as has been seen, it embodied no new principle, yet from another point of view marked a new and important departure in international law, if and so far as international law can be said to have existed at the beginning of the sixteenth century. The modern capitulations negatived the theory that the 'infidel' was the natural and necessary enemy of a Christian State, and admitted the Mahomedan

[1] The first and most important section of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), is in form a declaration as well as an enactment. Section 2 is in form an enactment only, and possibly the difference was intentional.

[2] See the Introduction by J. Theodore Bent to Early Voyages and Travels in the Levant, pp. ii, iii—Publications of the Hakluyt Society. Mr. Rashdall has recently drawn an interesting parallel between the self-governing communities of foreign merchants in Oriental countries and the self-governing communities of foreign students which, at Bologna and elsewhere, were eventually developed into Universities (Universities of Europe in the Middle Ages, i. 153). As to the jurisdiction over students at Bologna, see ibid. pp. 178 sqq.

State of Turkey for limited purposes into the family of European Christian States. At the same time they recognized the broad differences between Christian and Mahomedan institutions, habits, and feelings by insisting on the withdrawal from the jurisdiction of the local courts of Christian foreigners who resorted to Turkish territory for the purposes of trade, and by establishing officers and courts with jurisdiction over disputes between such foreigners.

The principles on which separate laws and a separate jurisdiction have been at different times and in different countries claimed on behalf of Western foreigners trading to the East were enunciated, many generations afterwards, by Lord Stowell in a passage which has become classical:—

'It is contended on this point that the King of Great Britain does not hold the British possessions in the East Indies in right of sovereignty, and therefore that the character of British merchants does not necessarily attach on foreigners locally resident there. But taking it that such a paramount sovereignty on the part of the Mogul princes really and solidly exists, and that Great Britain cannot be deemed to possess a sovereign right there; still it is to be remembered that wherever even a mere factory is founded in the eastern parts of the world, European persons trading under the shelter and protection of those establishments are conceived to take their national character from that association under which they live and carry on their commerce. It is a rule of the law of nations, applying practically to those countries, and is different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident. And this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation; they continue strangers and sojourners as their fathers were—*Doris amara suam non intermiscuit undam.* Not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and carry on their trade[1].'

[1] *The Indian Chief*, (1800) 3 Robinson, Adm. Rep. p. 28. See also the remarks of Dr. Lushington in the case of the *Laconia*, (1863) 2 Moo. P. C., N. S., p. 183.

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The Levant Company.

The first of the capitulations granted to England bears date in the year 1579 [1], and two years afterwards, in 1581, Queen Elizabeth established the Levant Company for the purpose of carrying on trade with the countries under the Ottoman Porte. In 1605 the company obtained a new charter from James I, and this charter, as confirmed by Charles II, recognized by various Acts of Parliament, and supplemented by usage, constituted the basis of the British consular jurisdiction in the East until the abolition of the Levant Company in 1825 [2].

By the charter of King James, as confirmed by the charter of King Charles, the company was invested with exclusive privileges of trade in great part of the Levant and Mediterranean seas, and with a general power of making by-laws and appointing consuls with judicial functions in all the regions so designated.

The charter of King James was altogether in the nature of a prerogative grant from home, and was not founded on any recital of concessions made by the various sovereigns in whose dominions it was to take effect. It did not expressly refer to any such concessions as the basis of a power to withdraw British subjects from the foreign tribunals, and such a power was apparently assumed even in cases in which those tribunals might, according to the local law, supply the legitimate forum. The charter merely provided that there should be no infraction of treaties.

[1] The capitulations with England now in force were confirmed by the Treaty of the Dardanelles in 1809, and are to be found in Hertslet's Treaties, ii. 346, and in Aitchison's Treaties, third edition, vol. xi. Appendix I.

[2] The statements in the following paragraphs, as to the jurisdiction exercised by the officers of the Levant Company, are derived partly from an unpublished memorandum written for the Foreign Office by the late Mr. Hope Scott (then Mr. J. R. Hope), by whom the Foreign Jurisdiction Act, 1843, was drawn. See also the case of *The Laconia; Papayanni* v. *The Russian Steam Navigation Company*, 2 Moo. P. C., N. S., 161. As to the history of the Levant Company, see Mr. Bent's Introduction to Early Voyages and Travels in the Levant, noticed above, and the article on Chartered Companies in the Encyclopaedia of the Laws of England.

The main strength of the coercive jurisdiction given by the charter appears, in Turkey at least, to have depended, on the one hand, upon the corporate character of the company and the power which it thus had over its own members, and, on the other hand, upon its exclusive privileges of trade which enabled it to prevent the influx of disorderly merchants and seamen.

The charter did not contemplate the exercise of any criminal jurisdiction properly so called, nor any of a civil character in mixed suits. These branches of the consular jurisdiction in the East are probably of gradual acquisition, and perhaps were not claimed at the time when King James and King Charles granted their charters.

Dissolution of Levant Company.

The jurisdiction conceded by the Sublime Porte was exercised mainly[1] by officers called consuls[2], who were appointed by the Levant Company, and whose procedure was regulated by by-laws of the Company made under powers very like those granted to the East India Company.

The Levant Company, with its exclusive privileges of trading and its indefinite legislative and judicial powers, closely resembled the East India Company; and the legal difficulties which arose when the East India Company extended the exercise of its legislative powers beyond the staff of its factories illustrate the technical difficulties which arose or might have arisen under the jurisdiction exercised by the consular officers of the Levant Company. But, as the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved. The Act which

[1] The jurisdiction was exercised also by the ambassador, who was appointed by the Crown, but was until 1803 nominated and paid by the Levant Company. He continued to be chief judge of the consular court down to 1857.

[2] Of course the use of the word 'consul' is of much older date; see Murray's Dictionary, and Du Cange, s. v., and the Report of the Select Committee of the House of Commons on Consular Establishments, 1835. As to the French consuls in the Levant during and before the seventeenth century, see Masson, Hist. du Commerce Français dans le Levant, p. xiv.

CH. VII. provided for its dissolution (6 Geo. IV, c. 33) enacted that thereafter all such rights and duties of jurisdiction and authority over His Majesty's subjects resorting to the ports of the Levant for the purposes of trade or otherwise as were lawfully exercised or performed, or which the various charters or Acts, or any of them, authorized to be exercised and performed, by any consuls or other officers appointed by the company, or which such consuls or other officers lawfully exercised and performed under and by virtue of any power or authority whatever, should be vested in and exercised and performed by such consuls and other officers as His Majesty might be pleased to appoint for the protection of the trade of His Majesty's subjects in the ports and places mentioned in the charters and Acts.

Difficulties arising from dissolution of Levant Company.

The intention of the Act, doubtless, was to transfer to the consular officers appointed by the Crown all the powers formerly vested in the consular officers appointed by the Levant Company. But it soon appeared that the dissolution of the company materially increased the difficulty of the task imposed on the consuls. The authority which had previously supported them was gone, and the prescriptive respect which might formerly have attached to the powers conferred by the charter was disturbed by the necessity which had now arisen of testing those powers by the recognized principles of the English constitution.

In 1826 the law officers of the Crown threw doubts on the legality of the general powers of fine and imprisonment, and of the power which had previously been held to be vested in the consuls of sending back British subjects in certain cases to this country, and thus the coercive character of the jurisdiction was greatly shaken.

Moreover, the Act of George IV had made no provision in lieu of the company's power of framing by-laws, and no method had been devised for meeting the difficulties arising out of a strict adherence to English jurisprudence and out of deviations from it by the consular tribunals.

And, lastly, the criminal and international jurisdiction had gradually assumed a form which the new state of affairs rendered in the highest degree important, but the exercise of which transcended such authority as the company's consuls might previously have claimed.

In 1836, eleven years after the dissolution of the Levant Company, an Act (6 & 7 Will. IV, c. 78) was passed to meet these difficulties. It recited that by the treaties and capitulations subsisting between His Majesty and the Sublime Porte full and entire jurisdiction and control over British subjects within the Ottoman dominions in matters in which such British subjects are exclusively concerned was given to the British ambassadors and consuls appointed to reside within the said dominions, and that it was expedient for the protection of British subjects within the dominions of the Sublime Porte in Europe, Asia, and Africa, and likewise in the States of Barbary, as well as for the protection of His Majesty's ambassadors, consuls, or other officers appointed or to be appointed by His Majesty for the protection of the trade of His Majesty's subjects in the said ports and places, that provision should be made for defining and establishing the authority of the said ambassadors, consuls, or other officers. And it went on to enact that His Majesty might by Orders in Council issue directions to His Majesty's consuls and other officers touching their rights and duties in the protection of his subjects residing in or resorting to the ports and places mentioned, and also directions for their guidance in the settlement of differences between subjects of His Majesty and subjects of any other Christian Power in the dominions of the Sublime Porte.

The Act of 1836 was a complete failure, and remained a dead letter. Its language and machinery were in many respects defective and open to objection.

Failure of Act of 1836; its causes.

British extra-territorial jurisdiction in the Levant was derived from two main sources: the authority of the Sublime Porte and the authority of the Crown of England. The charters of James and Charles ignored one of these sources,

CH. VII. and used language which seemed to treat the jurisdiction exercised by the consular officers of the Levant Company as resting exclusively on the prerogative of the Crown. The language of the Act of 1825 was sufficiently general to include, and was perhaps intended to include, authority derived from the Porte and from the consent of other European Powers, but the Act makes no specific reference to either of these sources. The Act of 1836 erred in the opposite direction. Its language was so framed as to countenance the theory, always disavowed by the English Government, that British ambassadors and consuls were in respect of their jurisdiction delegates of the Porte, instead of being officers of the Crown exercising powers conceded to the Crown by the Porte.

Again, the preamble, by referring specifically to the capitulations, and to cases in which British subjects were exclusively concerned, tended to discredit those important parts of the jurisdiction which had arisen from usage or which related to cases affecting foreign subjects under the protection of Great Britain.

Usage had played an important part in the development of British jurisdiction in the Levant. At the outset that jurisdiction, as has been seen, did not include criminal jurisdiction, properly so called, nor civil jurisdiction in suits of a mixed character. But by 1836 the subject-matter of this jurisdiction appears[1] to have included, either generally and constantly or in some places and occasionally—

(1) Crimes and offences of whatever kind committed by British subjects;

(2) Civil proceedings where all parties were British subjects;

(3) Civil proceedings where the defendant was a British subject and the plaintiff a subject of the Porte; and

(4) Civil proceedings where the defendant was a British subject and the plaintiff subject to another European Power.

And the exercise of this jurisdiction might be claimed, not

[1] According to Mr. Hope Scott.

only on behalf of British subjects, but equally on behalf of subjects of other Powers navigating under the flag, or claiming the protection, of Great Britain. It must be borne in mind that the Ionian Islands were at that time under the protection of the British Government, and that cases in which Ionian islanders were concerned were apt to come before the consular courts at Constantinople and elsewhere in the Levant. But, besides the Ionian islanders, there was a motley crew of persons of different nationalities, hangers-on of the embassy and others, who for reasons more or less legitimate claimed British protection. This was the origin of the class of protected persons referred to in modern Orders in Council under the Foreign Jurisdiction Acts [1].

Lastly, the Act was so vaguely worded as to leave great room for doubt as to the powers conferred by it on the Crown, and particularly as to how far the Crown could in accordance with it exercise powers of legislation. This was a matter of the greatest moment. Under the capitulations the 'custom' of the English was to be observed on the decision of any suit or other difference or dispute amongst the English themselves. And in proceedings between English and Europeans the *forum rei* was customarily allowed to entail the application of English law to an English defendant, but a strict adherence to English jurisprudence had never been observed. The law to be administered was so vague and uncertain that a power to declare and modify it had become imperatively necessary.

Foreign Jurisdiction Act of 1843.

The Act of 1836 was repealed and superseded by the Foreign Jurisdiction Act of 1843 (6 & 7 Vict. c. 94). This Act, the provisions of which are now embodied in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), was as conspicuous a success as its predecessor was a conspicuous failure. Its merits were that its recitals were sufficiently comprehensive to cover all possible sources of extra-territorial

[1] It is well known how scandalously the privilege of claiming foreign protection has been abused in places like Tangier.

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jurisdiction, and that its enacting words embodied a formula of great simplicity, and yet sufficiently elastic to cover all modes in which extra-territorial jurisdiction need be exercised. The theory on which the Act proceeded was that, in places beyond the Queen's dominions where the Queen has jurisdiction, she ought, with respect to the persons under that jurisdiction, to be in the same position as that which she occupies in a territory acquired by conquest or cession, that is to say, ought to have full power of legislating by Order in Council. The Act recited (as the Act of 1890 now recites) that by treaty, capitulation, grant, usage, sufferance, and other lawful means Her Majesty hath power and jurisdiction within divers countries and places out of Her Majesty's dominions, and that doubts have arisen how far the exercise of such power and jurisdiction is controlled by and dependent on the law and customs of this realm, and it is expedient that such doubts should be removed. It then declared and enacted, in terms reproduced by the Act of 1890, that 'it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath, or may at any time hereafter have, within any country or place out of Her Majesty's dominions in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory.'

To illustrate the effect of this enactment by a concrete instance, the Queen has, with respect to the jurisdiction exercisable by her at Shanghai, a place within the territorial limits of the empire of China, the same power as she has in Hong Kong, a British Crown colony outside the territorial limits of China and acquired by cession.

Law framed and administered under Foreign Jurisdiction Acts.

Under the Foreign Jurisdiction Act of 1843, and the various enactments which have been passed for amending and extending it, and which are now embodied in the Consolidation Act of 1890, consular and other judicial officers have been established in all parts of the world where the sovereign Power is non-Christian, and extensive

codes of law have been framed for their guidance[1]. In most cases the law adopted has been the English law, with the necessary modifications and simplifications; but at Zanzibar, which is much resorted to by natives of India, and from officers at which place an appeal is given to the High Court of Bombay, the law applied is the law of British India[2]. The course adopted for Zanzibar has been followed in the Orders in Council made in 1889 for the Persian Coast and islands and for the Somali Coast[3], and in the East Africa Order in Council of 1897[4].

Three stages in history of Acts.

Three stages may be traced in the history of the Foreign Jurisdiction Acts.

First stage: application to States under regular Governments.

During the first stage they were applied exclusively to territories under regular Governments to whom consular officers were accredited, and where consular jurisdiction was exercised concurrently by the officers of other European States. Practically they were only applied to non-Christian countries, such as Turkey, Persia, and China. 'Such countries,' as Mr. Westlake has observed in a recent work[5], 'have civilizations differing from European, and, so far as they are not Mahomedan, from those of one another. The Europeans or Americans in them form classes apart, and would not feel safe under the local administration of justice which, even were they assured of its integrity, could not have the machinery necessary for giving adequate protection to the unfamiliar interests arising out of a foreign civilization. They were therefore placed under the jurisdiction of the consuls of their respective States, pursuant to conventions entered into by the latter with the local Governments.'

Second stage:

It subsequently became necessary to extend the system of

[1] See the Orders in Council printed in vol. iii. of the Statutory Rules and Orders Revised.

[2] The latest of the Orders relating to Zanzibar is now the Zanzibar Order in Council of 1897. London Gazette, July 9, 1897.

[3] The Somali Coast Order has not been brought into operation.

[4] London Gazette, July 9, 1897. Summary in Times of Aug. 13, 1897. See also Art. 3 of the Africa Order in Council, 1892.

[5] Chapters on Principles of International Law, p. 102.

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foreign jurisdiction to barbarous countries not under any settled government. By an Act of 1861 (24 & 25 Vict. c. 31)[1] the colonial authorities of Sierra Leone were empowered to exercise jurisdiction in the uncivilized territories adjoining that colony. And by an Act of 1863 (26 & 27 Vict. c. 35)[1] similar provision was made with respect to territories adjoining the Cape Colony. A more important departure in this stage was marked by the passing of the Pacific Islanders Protection Act of 1875 (38 & 39 Vict. c. 51). By this Act Her Majesty was empowered to create by Order in Council a court of justice with civil, criminal, and admiralty jurisdiction over Her Majesty's subjects within certain islands and places in the Western Pacific, with power to take cognizance of all crimes and offences committed by Her Majesty's subjects within any of those islands and places. Three years later power was given in more general terms to bring places not within the dominions of any settled government under the operation of the Foreign Jurisdiction Acts. By s. 5 of the Foreign Jurisdiction Act, 1878 (41 & 42 Vict. c. 67), now reproduced by s. 2 of the Foreign Jurisdiction Act, 1890, it was enacted that in any country or place out of Her Majesty's dominions in or to which any of Her Majesty's subjects were for the time being resident or resorting, and which was not subject to any Government from whom Her Majesty might obtain power and jurisdiction by treaty, or any of the other means mentioned in the Foreign Jurisdiction Act, 1843, Her Majesty should, by virtue of the Act, have power and jurisdiction over Her Majesty's subjects[2] for the time being resident in or resorting to that country or place, and the same should be deemed to be power and jurisdiction had by Her Majesty therein within the Foreign Jurisdiction Act, 1843.

[1] This Act is still in force, but may be revoked or varied by an Order in Council under the Foreign Jurisdiction Act, 1890 (see 53 and 54 Vict. c. 37, s. 17).

[2] Note that the jurisdiction under these enactments is expressly confined to British subjects.

Third stage: application to protectorates.

An important stage was reached when the Foreign Jurisdiction Acts were applied to protectorates. In territories to which the Pacific Islanders Protection Act applies, such as Samoa, British officers and French or German officers may be exercising jurisdiction side by side. But in their third stage the Foreign Jurisdiction Acts have been applied to certain territories in Africa which are under the exclusive protectorate of England in this sense, that their chiefs are debarred from entertaining diplomatic relations with any other European Power, and that consequently such extra-territorial jurisdiction as is exercised within the territories is monopolized by officers of the British Government instead of being exercised by them concurrently with officers of other European States.

Recognition of African protectorates by Berlin Conference.

The term 'protectorate' acquired international recognition in the proceedings of the Berlin Conference of 1885, when it was stipulated (by Art. 34 of the Acte Général) that any Power which might thereafter either acquire possession of, or assume a protectorate over, any territory on the coast of Africa, should notify the same to the other signatory Powers, in order to give them an opportunity of putting forward any claim to which they might conceive themselves entitled. This stipulation did not apply to annexations or protectorates in the interior[1].

Charter to German Colonization Society.

Immediately after the signature of the general Act of Berlin, the Emperor William granted to the German Colonization Society in East Africa a charter of protection, in which he spoke of territories which by certain traders had been ceded to him for the German Colonization Society, with 'territorial superiority[2],' and granted to the society, on certain conditions, the authority to exercise all rights arising from their treaties, including that of jurisdiction

[1] The general Act of Berlin is to be found in Hertslet, Map of Africa by Treaty, i. 20. There are several references to protectorates in other articles of the Act of Berlin, and also in the subsequent Brussels Act with respect to the African Slave Trade, Hertslet, i. 48.

[2] The word used in the charter is 'Landeshoheit,' and is translated in Hertslet's Map of Africa by Treaty as 'sovereign rights.'

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over both the natives and the subjects of Germany and of other nations established in those territories, or sojourning there for commercial or other purposes[1].

Questions as to effect of German charter.

As to the legal and international effects of this charter and of the later imperial Act of April, 1886, by which the charter has apparently been superseded, many questions have been raised by writers on international law both in this country and on the Continent[2]. Have the territories to which they apply become German territory in a sense which imports all the rights and responsibilities of territorial sovereignty? Or are they merely subject to a German protectorate, implying a lesser degree of sovereignty and responsibility?

In considering these questions it must be borne in mind that Germany had in 1886 practically no colonial experience. England, with her vast system of colonies and dependencies, and with her factories and mercantile establishments in every part of the world, is familiar with the several distinctions for legislative, judicial, and executive purposes between the British dominions as a whole and the places outside the British dominions in which British jurisdiction is exercised; between the United Kingdom and the colonies and dependencies which, with the United Kingdom, make up the British Empire, and are sometimes described collectively in Acts of Parliament as British possessions; and lastly, between the several classes of British possessions; and with the mode in which, extent to which, and conditions under which imperial authority may be exercised in places belonging to each of these categories. Germany, when the present empire was formed, had no colonies, and few important mercantile settlements in foreign countries, and the constitution of the empire contained no provision for the mode in which authority was to be exercised in any possessions or colonies which might subsequently be acquired. Hence the antithesis which was

[1] Hertslet, Map of Africa by Treaty, i. 303.

[2] See e. g. Hall, Foreign Jurisdiction of the British Crown, part iii. chap. 3; Westlake, Chapters on the Principles of International Law, p. 177; Despagnet, Essai sur les Protectorats, chap. iii.

most present to the minds of German statesmen and jurists was that between their home or European territories—the *Reichsgebiet* proper—and their new acquisitions beyond the seas; and the tendency was to distinguish these latter by the collective name of protected territory, or '*Schützgebiet*.' It was not unnatural that this appellation should appear inconveniently indefinite, and that more precise information should have been desiderated as to the category in which these territories ought to be placed; as to whether they were or were not to be treated, for international purposes, as German territory; as to whether the natives were or were not German subjects; and generally as to the nature and extent of the rights claimed and responsibilities assumed by the German sovereign within these regions. African protectorates are still in a transitional and experimental stage, and it is not always easy to give a precise answer to questions of this kind. The German Protectorate in East Africa, with its double government by the Imperial Crown and by a chartered company, was a political experiment resembling in its nature, and perhaps consciously modelled on, the earlier form of British rule in India. The vagueness of language of the German charter and Act finds a close parallel in the vagueness of language of the English Regulating Act of 1773, and this vagueness is probably attributable in each case to the same causes. As Sir James Stephen has remarked[1], the authors of the Regulating Act 'wished that the King of England should act as the sovereign of Bengal, but they did not wish to proclaim him to be so.'

Question as to English protectorate in Africa.

The questions which were raised with reference to the German protectorate claimed in 1885 may be raised, and have been raised, with reference to the English protectorates established in various parts of Africa over regions occupied by uncivilized tribes. The term 'protectorate,' it has been observed, implies a protecting State and a protected State. How can it be applied to uncivilized regions where there is no

[1] Nuncomar and Impey, ii. 129.

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organized State to protect? In what respects does a protectorate of this kind, where all the effective powers of sovereignty are exercised by the protecting State, differ from territorial sovereignty[1]? The tenuity of the distinction between a protectorate of this kind and territorial sovereignty is well illustrated by the recent Jameson case. In that case the expedition started from two points, one of which, Mafeking, was within the boundaries of the Cape Colony, and therefore clearly within British territory, whilst the other, Pitsani Pitslogo, was within the Bechuanaland Protectorate. The Lord Chief Justice, in charging the jury[2], intimated clearly that in his opinion the latter of these places, as well as the former, must, at all events for the purposes of the Act under which the indictment was framed (the Foreign Enlistment Act, 1870, 33 & 34 Vict. c. 90, s. 11), be treated as if it were within the limits of Her Majesty's dominions. And this might, perhaps, reasonably be held, for the nature of the sovereignty exercised by the British Crown within the

[1] The following are illustrative specimens of treaties made with native chiefs in Africa:—

'[*name of chief*] hereby declares that he has placed himself and all his territories, countries, peoples, and subjects under the protection, rule, and government of the Imperial British East Africa Company, and has ceded to the said Company all its [*qu.* his] sovereign rights and rights of government over all his territories, countries, peoples, and subjects, in consideration of the said Company granting the protection of the said Company to him, his territories, countries, peoples, and subjects, and extending to them the benefit of the rule and government of the said Company. And he undertakes to hoist and recognize the flag of the said Company.' Hertslet, Map of Africa by Treaty, i. 166.

'We, the undersigned Sub-Chiefs, . . . acting for and on behalf of the Wanyassa people living within [specified limits], most earnestly beseech Her Most Gracious Majesty the Queen of Great Britain and Ireland . . . to take our country, ourselves, and our peoples under her special protection, we solemnly pledging and binding ourselves and our peoples to observe the following conditions:—

'1. That we give, over all our country within the above-described limits, all sovereign rights, and all and every other claim absolutely, and without any reservation whatever, to Her Most Gracious Majesty the Queen [&c.] for all time coming.' Hertslet, i. 188.

It is difficult to see what residuum of sovereignty remains after these cessions.

[2] Times, July 29, 1896.

protectorate was such that the British Crown and its agents and officers could, whilst a protected native chief could not, prevent an aggression from the protectorate into neighbouring territory, and consequently such an aggression was within the mischief of the Act [1]. It must be remembered, however, that the points of law arising in the Jameson case were not fully argued, and that the language of a charge to the jury cannot always be construed with the same strictness as the language of a judgement. The law was laid down in the Jameson case with reference to the construction of a particular statute, and the propositions embodied in the chief justice's charge must not receive too wide an application. It seems clear that for ordinary purposes the territory of a protectorate is foreign and not British territory. If this were not so, orders for establishing and regulating the jurisdiction exercisable within it by British authorities could not be made under the Foreign Jurisdiction Act. Perhaps it would be accurate to say that for the purposes of municipal law the territory of the Bechuanaland Protectorate is not, but for the purposes of international law must be treated as if it were, part of the British dominions. The line of division is thin, but it exists, and it has its utility. If the objection is raised that protectorates of this kind are inconsistent with previously received rules and formulae of international law, the answer is that they have been found by practical experience to provide a convenient halfway house between complete annexation and complete abstinence from interference; that international law is an understanding between civilized nations with respect to the rules applicable to certain existing facts; that it is in a state of constant growth and development; and that when new facts make their appearance the appropriate rules and formulae will speedily be devised [2].

[1] See the Order in Council as to jurisdiction in the protectorate, below, p. 438.

[2] The terms 'protectorate' and 'sphere of influence' have sometimes been loosely treated as synonymous. But the latter term has merely a negative meaning. It implies an engagement between two States, that one of them will abstain from interfering or exercising influence within

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Persons over whom consular jurisdiction is exercisable.

The application to protectorates of the machinery of the Foreign Jurisdiction Acts has brought into greater prominence the question as to the classes of persons with respect to whom the jurisdiction exercised in accordance with those Acts can be or ought to be exercised. The answer to these questions depends upon the nature and origin of the jurisdiction, and on the terms of the instrument by which the jurisdiction is regulated. As the jurisdiction is derived from an arrangement between the British Crown and the territorial sovereign, it clearly can be made exercisable in the case of persons under either of those authorities. But in the territories where it was first exercised, it was required for the protection of foreigners, and was not intended for, and was not exercised in the case of, subjects of the territorial sovereign. The classes of persons for whom it was intended were either British subjects or persons entitled to the political protection of the British Crown. And by the Ottoman Order in Council of 1873 (Articles 16–19), as in other Orders in Council framed on the same lines, provision is made for the registration of these two classes of persons. In the case of the *Laconia*[1], which was between British subjects and Russian subjects in respect of a collision between a British and a Russian ship, it was found by the Judicial Committee of

certain territories, which, as between the contracting parties, are reserved for the operations of the other. Such an engagement does not of itself involve the exercise of any powers or the assumption of any responsibility by either State within the sphere of influence reserved to itself. But the exclusion of interference by one of the States within a particular territory may involve the assumption by the other of some degree of responsibility for the maintenance of order within that territory. Thus a sphere of influence is a possible protectorate, and tends to pass into a protectorate, just as a protectorate tends to pass into complete sovereignty. The chief use of establishing a sphere of influence appears to be to minimize the risk of war arising from scrambles for territory, and to obviate the necessity for effective occupation as a bar to annexation or encroachment by a competent State. But the arrangement on which a 'sphere of influence' is based has, of itself, no international validity, and is not binding except on such States as are parties to the arrangement. The phrase was invented to meet a transient state of things, and is perhaps tending to become obsolete.

[1] (1863) 2 Moo. P. C., N.S., 161; 33 Law Journal, N.S., P.M. & A. 11.

the Privy Council that the Ottoman Government had long acquiesced in allowing the British Government jurisdiction between British subjects and subjects of other Christian States exercised by means of consular courts, and that whilst there was no compulsory power in a British court in Turkey over any but British subjects, a Russian or other foreigner might voluntarily submit to the jurisdiction of such a court with the consent of his sovereign.

Consequences of establishment of protectorate.

The decision in the *Laconia* case applied to a state of circumstances where there were several Powers exercising extra-territorial jurisdiction in the territories of the same State. It requires modification in its application to the conditions of a protectorate. The assumption of control over the foreign relations, or, to use another expression, over the external sovereignty, of a State implies the assumption of responsibility both for the safety and for the good conduct of foreigners who resort to the territories of the protected State and who are not subjects of the protecting State; that is to say, for matters which, in the case of an independent State, are dealt with by diplomatic intervention. And, except where the local law and administration of justice are in full conformity with European standards, this responsibility cannot be effectively discharged unless the courts of the protecting State exercise jurisdiction over such foreigners.

Conversely, when the protecting State establishes courts with competent jurisdiction and adequate security for the administration of justice in accordance with Western ideas, the necessity for consular courts of other Western Powers disappears. Thus, when France established a protectorate over the regency of Tunis and set up French courts in the regency, the Queen consented to abandon her consular jurisdiction, with a view to British subjects in the regency becoming justiciable by those French courts under the same conditions as French subjects[1]. The precedent of Tunis

[1] See the Order in Council of December 31, 1883, Statutory Rules and Orders Revised, iii. 697; and Hertslet, Map of Africa by Treaty, 915.

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has not yet been followed in Zanzibar, but probably soon will be[1].

Thus, the assumption of an exclusive protectorate seems to imply the exercise of jurisdiction over foreigners and the exclusion of the jurisdiction of foreign consular courts, and in the opinion of the latest authorities on international law jurisdiction over foreigners is, in such protectorates, legally exercisable under the Foreign Jurisdiction Act[2].

Jurisdiction in African protectorates.

A good illustration of the mode in which the powers exercisable under the Foreign Jurisdiction Act have been applied to uncivilized regions, and adapted to protectorates, is supplied by the Africa Orders in Council, 1889 and 1892[3], under which local jurisdictions (i.e. areas of jurisdiction) can be constituted for most parts of Africa. The Order of 1889 declares, by Article 10, that the powers conferred by the Order within a local jurisdiction constituted under the Order are to extend to the persons and matters following, in so far as by treaty, grant, usage, sufferance, or other lawful means Her Majesty has power or authority in relation to such persons and matters, that is to say:—

(1) British subjects as defined by the Order;

(2) The property and personal and proprietary rights and obligations of British subjects within the local jurisdiction (whether such subjects are or are not within the

[1] A court for Zanzibar with a barrister-judge has now been constituted under the Zanzibar Order in Council of 1897.

[2] See e. g. Westlake, p. 187.

[3] Statutory Rules and Orders Revised, vol. iii. p. 259; Statutory Rules and Orders, 1892, p. 486. These Orders extend to Africa and Madagascar, but only to those parts which are made local jurisdictions under them, and which are not under special Orders in Council. Thus Morocco, Zanzibar, East Africa, and apparently all the protectorates administered by the Colonial Office, are outside the operation of the Orders of 1888 and 1892. On the other hand, the Niger Coast Protectorate, British Central Africa (Nyassaland), and Uganda are under them. As to East Africa and Zanzibar, see now the East Africa Order in Council of 1897 and the Zanzibar Order in Council of 1897, London Gazette, July 9, 1897; Times, Aug. 13, 1897.

jurisdiction), including British ships with their boats and the persons and property on board thereof, or belonging thereto;

(3) Foreigners, as defined by the Order, who submit themselves to a court, in accordance with the provisions of the Order;

(4) Foreigners, as defined by the Order, with respect to whom any State, king, chief, or Government, whose subjects, or under whose protection they are, has, by any treaty, as defined by the Order, or otherwise, agreed with Her Majesty for, or consented to, the exercise of power or authority by Her Majesty.

Classes of British subjects.

British subjects in the proper sense are of two classes:—

(1) Natural-born British subjects; and

(2) Naturalized British subjects.

Every person born within the Queen's dominions, whether of British or of foreign parents, is a natural-born British subject, unless he has renounced his British nationality in manner provided by s. 4 of the Naturalization Act, 1870 (33 & 34 Viet. c. 14).

Persons born out of the Queen's dominions whose fathers or grandfathers in the male line were natural-born British subjects are also by Act of Parliament[1] natural-born British subjects, subject to certain exceptions and qualifications, unless they have renounced their British nationality in manner provided by law.

Naturalized British subjects may have become so either by virtue of the imperial Naturalization Act of 1870, or by virtue of the law of a British possession. The rights of aliens naturalized under the imperial Act are not expressed by the Act to extend beyond the United Kingdom (s. 7). Naturalization by virtue of the law of a British possession does not operate beyond the limits of that possession. But it would seem that the holders of certificates of naturalization

[1] 25 Edw. III, stat. 2; 7 Anne, c. 5, s. 3; 4 Geo. II, c. 21; 13 Geo. III, c. 21.

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The rights of an alien to whom a certificate of naturalization is granted under the Act of 1870 are subject to the qualification that he is not, when within the limits of the foreign State of which he was the subject previously to obtaining his certificate of naturalization, to be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or of a treaty to that effect (33 & 34 Vict. c. 14, s. 7).

A child born abroad of a father or mother (being a widow) who has obtained a certificate of naturalization in the United Kingdom is, if during infancy he becomes resident with the parent in the United Kingdom, to be deemed a naturalized British subject (see 33 & 34 Vict. c. 14, s. 10 (5)).

In many of these cases there may be a double nationality. This is specially apt to occur in the case of the children or grandchildren, born abroad, of British subjects. The Acts which gave such persons the status of British subjects were passed for a special purpose, are apt to cause conflicts of law, and are not always suitable to Oriental circumstances. Enactments of this kind ought, it may reasonably be argued, to be construed *secundum materiam*. It appears to have been held at one time that the expression 'natural-born subjects' is, in the statutes affecting India, always taken to mean European British subjects[2], and, although this position can no longer be maintained in its entirety (see e.g. 21 & 22 Vict. c. 106, s. 32), there is ground for argument that it may be construed subject

[1] It is impossible to discuss fully here the difficult questions which have been raised as to the effect of the statutory provisions under which certificates of naturalization are granted, and particularly as to the construction of s. 7 of the Naturalization Act, 1870. Naturalization of aliens in India is provided for by Act XXX of 1852, which must be read with reference to the later imperial Act of 1870.

[2] See Minutes by Sir H. S. Maine, No. 97.

to restrictions in its application to descendants of non-European subjects of the Crown.

British protected subjects.

The term 'British subject' is defined by the Africa Order of 1889 as including not only British subjects in the proper sense of the word, but also any persons enjoying Her Majesty's protection and, in particular, subjects of the several princes and States in India in alliance with Her Majesty, residing and being in the parts of Africa mentioned in the Order [1].

Jurisdiction over foreigners

The term 'foreigner,' as defined by the Africa Order of 1889, means a person, whether a native or subject of Africa or not, who is not a British subject as defined by the Order.

It seems doubtful whether the criminal jurisdiction exercisable under the Africa Order in Council, 1889, could be exercised in the case of 'foreigners,' and the exercise under it of civil jurisdiction in respect of a 'foreigner' is expressly declared to require his specific consent in each case, whilst the court is also empowered to require evidence that no objection is made by the Government whose subject the foreigner is.

It was soon felt that these restrictions on the exercise of jurisdiction over foreigners were incompatible with the conditions of a protectorate, and accordingly the jurisdiction received a wide extension under the Africa Order in Council, 1892. This Order, after reciting in the usual terms that, by treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the parts of Africa mentioned in the Africa Order in Council, 1889, goes on to recite that—

'By the general Act of the Conference of Berlin signed in 1885 the several Powers who were parties thereto (in this Order referred to as the Signatory Powers) declared, with respect to occupations in Africa by any of the Signatory Powers, that the establishment of authority in protected territories was an obligation resting upon

[1] This language is in accordance with the terms of the enactment which is reproduced by s. 15 of the Foreign Jurisdiction Act, 1890, and which was passed before the Interpretation Act, 1889.

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It then goes on to enact that—

'Where Her Majesty has declared any territory or place within the limits of the Africa Order in Council, 1889, to be a protectorate of Her Majesty, the provisions of that Order having reference to British subjects, except Part XIV thereof[1], shall extend in like manner to foreigners to whom this Order applies, and all such foreigners shall be justiciable by the courts constituted by the said Order for the protectorate under the same conditions as British subjects, and to the extent of the jurisdiction vested by law in those courts; and Part XII[2] and so much of the rest of the Order as requires the consent of any foreigner as a condition of the exercise of jurisdiction shall be of no force or effect in the protectorate, so far as respects foreigners to whom this Order applies.'

The Order defines the expression 'foreigners to whom this Order applies' as meaning subjects of any of the Signatory Powers, except Her Majesty, or of any other Power which has consented that its subjects shall be justiciable under the Africa Order of 1889 and the Order of 1892.

It will be seen that the jurisdiction exercisable under the Orders of 1889 and 1892, though very extensive in its scope, is still personal in its character.

But the Order in Council which was made under the Foreign Jurisdiction Act, 1890, on May 9, 1891[3], for the Bechuanaland Protectorate and adjoining regions, seems to be framed on somewhat different lines, and appears to give jurisdiction in general terms, without distinction between British subjects and foreigners, and without reference to any acquiescence or consent, express or implied. This Order,

[1] Part XIV provides for the registration of British subjects.

[2] As to civil jurisdiction over foreigners with the consent of themselves or their Governments.

[3] Statutory Rules and Orders, 1891, p. 295

after reciting that the territories of South Africa situate within the limits of the Order as described[1] are under the protection of Her Majesty the Queen, and that by treaty, grant, usage, sufferance, and other lawful means Her Majesty has power and jurisdiction in those territories, proceeds to enact as follows:—

'II. The high commissioner may, on Her Majesty's behalf, exercise all powers and jurisdiction which Her Majesty, at any time before or after the date of this Order, had or may have within the limits of this Order, and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things within the limits of this Order as are lawful, and as in the interest of Her Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from Her Majesty or through a secretary of state.

'III. The high commissioner may appoint so many fit persons as in the interest of Her Majesty's service he may think necessary to be deputy commissioners, or resident commissioners, or assistant commissioners, or judges, magistrates, or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions.

'Every such officer may exercise such powers and authorities as the high commissioner may assign to him, subject nevertheless to such directions and instructions as the high commissioner may from time to time think fit to give him.

'The appointment of such officers shall not abridge, alter, or affect the right of the high commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

'The high commissioner may remove any officer so appointed.

'IV. In the exercise of the powers and authorities hereby conferred upon him, the high commissioner may, amongst other things, from time to time, by proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order, including the prohibition and punishment of acts tending to disturb the public peace.

'The high commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native chiefs, tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.

. . . . . .

[1] The limits are the parts of South Africa bounded by British Bechuanaland, the German Protectorate, the Rivers Chobe and Zambesi, the Portuguese Possessions, and the South African Republic.

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'VII. The courts of British Bechuanaland shall have in respect of matters occurring within the limits of this Order the same jurisdiction, civil and criminal, original and appellate, as they respectively possess from time to time in respect of matters occurring within British Bechuanaland, and the judgements, decrees, orders, and sentences of any such court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals therefrom may be had and prosecuted, in the same way as if the judgement, decree, order, or sentence had been made or given under the ordinary jurisdiction of the court.

'But the jurisdiction hereby conferred shall only be exercised by such courts, and in such manner and to such extent, as the Governor of British Bechuanaland shall by proclamation from time to time direct[1].'

The Matabeleland Order in Council, 1894[2], which was passed to provide for the administration of the Matabeleland Protectorate by the British South Africa Company, is framed on similar principles. It sets up a high court and a Land Commission, and makes administrative and legislative arrangements hardly distinguishable in their character from those adopted for regions which have been formally incorporated in the Queen's dominions[3].

Conclusions as to jurisdiction under Foreign Jurisdiction Acts.

The general conclusions as to the classes of persons and cases with respect to which jurisdiction may be exercised by courts established by Orders in Council in accordance with the Foreign Jurisdiction Acts appear to be—

1. The principles on which the jurisdiction rests do not exclude its exercise with respect to any classes of persons being the subjects, or under the authority, of the State which establishes the court, or of the State in whose territory

[1] The Order in Council of June 29, 1896 (Statutory Rules and Orders, 1896, p. 117), which relates to other parts of South Africa, is framed on the same lines as the Order of May 9, 1891.

[2] Statutory Rules and Orders, 1894, p. 133.

[3] The Orders in Council made for the 'hinterland' protectorates adjoining British colonies on the West Coast of Africa have, instead of defining the jurisdiction exercisable in protectorates, transferred the powers of legislating for them to the legislature of the adjacent British colony. The legislation under these powers is either specific or simply applies the colonial law. In some cases jurisdiction appears to be exercisable over all persons. In other cases it is left with the chiefs, subject to the direction and control of the British authorities.

the court is established, or any classes of cases, whether civil or criminal.

2. But in practice the jurisdiction, being required mainly for the protection of foreigners, is not usually exercised in disputes between natives of the country or in criminal proceedings which do not affect foreigners.

3. As respects persons who are not subjects either of the State which establishes the court, or of the State in whose territory the court is established, the exercise of the jurisdiction, according to the view adopted in framing most of the Orders in Council, requires consent, express or implied, on the part of those persons or of the States to whom they belong, but a general consent to the exercise of jurisdiction over all or any of the subjects of any State may be implied by acquiescence, or by such acts as the recognition of a protectorate.

4. In the case of certain protectorates in Africa the jurisdiction has been given in more general and indefinite terms, and apparently is capable of being exercised over any persons and in any cases over and in which territorial jurisdiction is exercisable [1].

5. The Order in Council can limit and define in any manner which may be considered expedient the classes of persons and cases with respect to which jurisdiction is to be exercised.

Application of principles to India.

In considering the application of the foregoing principles to India, the chief differences to be borne in mind are—

(1) The limitations on the powers of the Indian Legislature, by which is meant the authority described in Acts of Parliament as 'the Governor-General in Council at

[1] The references to native law and custom in the Orders in Council of 1892 and 1894 clearly show that jurisdiction was intended to be exercised under them in cases between natives of the country. For a very curious illustration of the mode in which this kind of jurisdiction has been exercised on the West Coast of Africa, see Fanti Customary Laws, by J. M. Sarbah (London, 1897).

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meetings for the purpose of making laws and regulations';

(2) The special relation in which the Government of India, as representative of the paramount Power, stands to the Native States.

Powers of Indian Legislature.

The Indian Legislature is the creation of statute. Its powers are derived wholly from Acts of Parliament, and are limited with reference to persons, places, and subject-matter by the Acts of Parliament by which they are conferred.

Section 43 of the Government of India Act, 1883 (3 & 4 Will. IV, c. 85), empowered the Governor-General in Council to make, subject to certain restrictions, 'laws and regulations for repealing, amending, or altering any laws or regulations whatever then in force, or thereafter to be in force, in the said territories (i. e. the territories under the government of the East India Company), or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by His Majesty's charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of princes and States in alliance with the said Company' (i. e. the East India Company)[1].

[1] As to the powers exercisable under this section the following opinion was given to the East India Company in 1839:—

'We think the Legislative Council has power to make laws to provide for the punishment of offences in cases here contemplated. The Legislative Council has power to pass laws enacting and declaring that crimes and offences committed in the territories of princes or States in India adjacent to the British territories by persons, the native subjects of and owing obedience to the laws of such British territories, shall be liable to be tried and punished as if committed within the local limits of the British territories. Crimes and offences against the State, and the crimes of forgery, coining, &c., might frequently be committed without the limits of the Company's territories. Indeed, by the existing laws, British subjects are liable to be tried in the supreme courts for offences committed anywhere within the Company's limits. We do not consider the affirmative clause in 3 & 4 Will. IV, c. 85, s. 43, giving the power to the Legislative Council to make laws "for all servants of the said Company within the

This section has been superseded by the Indian Councils Act, 1861, and has been repealed, but is still of importance as the enactment under which the Penal Code of 1860 was made.

Under s. 3 of that Code, any person liable by any law passed by the Governor-General of India in Council to be tried for an offence committed beyond the territories of British India, is to be dealt with according to the provisions of the Code, for any act committed beyond those territories, in the same manner as if the act had been committed within them.

Under s. 4 of the Code, every servant of the Queen is subject to punishment under the Code for every act or omission contrary to its provisions, of which, whilst in such service, he is guilty within the dominions of any prince or State in alliance with the Queen by virtue of any treaty or engagement theretofore entered into by the East India Company or made in the name of the Queen by any Government of India.

The enactments on which the powers of the Indian

dominions of princes and States in alliance with the said Company," as restraining the Legislative Council from making laws for the purposes in question, but as either perhaps unnecessary or as meant to remove all doubt as to the power to bind servants of the Company in the particular case specified, who might not be (as occasionally happens) either natives or subjects of the British territories or British subjects of Her Majesty.

'We think that the Legislative Council has power in the same manner to provide for the trial and punishment of crimes and offences committed upon the high seas, enacting and declaring them to be offences of the same quality and triable and punishable as if they had been committed on land, as has been done as to offences committed at sea by British statutes. It would, of course, be proper to limit the application of such a law to persons, natives and subjects, owing obedience to the laws of the British territories. For piracy, &c., provision has been made by existing laws.

(*Signed*) J. CAMPBELL,
R. M. ROLFE,
R. SPANKIE,
JAMES WIGRAM.

'Temple, January 30, 1839.'

But it is difficult to reconcile this opinion with the opinion subsequently given as to the inability of the Indian Legislature to pass laws binding on natives of British India outside the territories of British India (see Forsyth, Cases and Opinions on Constitutional Law, pp. 17, 32).

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Section 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), empowered the Indian Legislature, subject to the provisions of the Act, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever 'now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever, within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.'

Section 1 of the Government of India Act, 1865 (28 & 29 Vict. c. 15), after reciting that the Governor-General in Council had power to make laws and regulations for all persons, British or native, within the Indian dominions, and that it was 'expedient to enlarge the powers of the Governor-General in Council by authorizing him to make laws and regulations for all British subjects within the dominions of' native princes, empowered the Indian Legislature to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise.

Section 1 of the Indian Councils Act, 1869 (32 & 33 Vict. c. 98), empowered the Indian Legislature to make laws and regulations for all persons, being native Indian subjects of Her Majesty, without and beyond as well as within the Indian territories under the dominion of Her Majesty.

Section 2 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), explains that the expression 'now under the dominion of Her Majesty,' in the Act of 1861, is to be read as if the words 'or hereafter' were inserted after 'now.'

It will be observed that the expression used in the Act of 1861 is, 'within the dominions of princes and States in alliance with Her Majesty,' an expression substituted for and apparently framed on the words in the Act of 1833, 'princes and States in alliance with the said Company.' The expression in the Act of 1865 is, 'princes and States in India in alliance with Her Majesty.' The language used in the Act of 1861, if construed literally, would seem wide enough to include the territories of any friendly State, whether in Europe or elsewhere. But some limitation must be placed upon it, and it may perhaps be construed as including States having treaty relations with the Crown through the Government of India, whether subject to the suzerainty of Her Majesty or not[1]. However this may be, the power of the Indian Legislature to make laws binding on persons, other than natives of British India, outside British India and the Native States of India, seems, under existing circumstances, to be open to question.

There is also a doubt as to the class of persons for whom, under the denomination of 'British subjects,' legislative powers may be exercised under the Act of 1865. The preamble of that Act speaks of 'all persons, *British or natives*, within the Indian dominions,' and the Act then gives power to legislate for *all British subjects* in Native States. It was accordingly argued that 'British subjects' did not include natives of British India[2]. The difficulty arising from this particular doubt was removed by the wider language of the Act of 1869, but it is still not perfectly clear whether the power of the Indian Legislature under the Acts of 1865 and 1869 to make laws operating beyond British India extends to persons who are neither British subjects of European descent nor natives of British India. The earlier enactments

[1] This seems to be the construction adopted by the late Mr. Justice Stephen, who says: 'The Government of India has power to legislate for public servants both in Native States included in British India, and in Native States adjacent to British India.' History of Criminal Law, ii. 12.

[2] See Minutes by Sir H. S. Maine, Nos. 36 and 43.

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relating to India were passed at a time when it was doubtful whether, or how far, British sovereignty extended beyond the presidency towns, and when full powers of sovereignty were not exercised over natives of the country even within those towns. Notwithstanding the declaration in the preamble to the Charter Act of 1813 that the possession of the territorial acquisitions of the Company in India was to be 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same,' there was still room for doubt whether the native inhabitants of those possessions were British subjects within the meaning usually attached to that term by Acts of Parliament, and whether their status did not more nearly resemble that of natives of the territories in Africa which are under British protection, but have not been formally incorporated in the British dominions. Consequently the term 'British subject' has to be construed in a restricted sense in the earlier of these enactments, and it is possible that the restricted meaning which had been attached to it by usage still continued to attach to it when used in some of the enactments dating subsequently to the time when British India had passed under the direct and immediate sovereignty of the Crown. The term as used in Acts of Parliament was never precisely defined, and perhaps was treated as including generally white-skinned residents or sojourners in the country by way of contradistinction to the native population [1].

[1] The doubts which were at one time entertained as to the meaning to be attached to the term 'British subject,' in its application to persons born or living in India, are well illustrated by a note which is quoted at p. 89 of Morley's Digest from an edition by Mr. L. Clarke of the statute 9 Geo. IV, c. 33. This note says: 'According to one opinion, all persons born within the Company's territories are British subjects. This opinion is founded on the supposition that these territories are British colonies, and stand in the same situation as the island of Bombay, the Canadas, the Cape of Good Hope, or any other colony which has been acquired by conquest or ceded by treaty. According to another opinion, those persons only are British who are natives, or the legitimate descendants of natives, of the United Kingdom or the colonies which are admitted to be annexed to the Crown. A third opinion considers Christianity to be a test of an individual being a British subject, provided that the

After the status of 'Roman citizenship' had been extended to all the inhabitants of British India, the Indian Legislature found it expedient to devise a term which should indicate the class formerly known as British subjects in the narrower sense, and for that purpose they invented the definition of European British subject, which is now to be found in s. 4 of the Code of Criminal Procedure, 1882. That section declares that 'European British subject' means—

'(1) Any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian colonies or possessions of Her Majesty, or in the colony of New Zealand, or in the colony of Cape of Good Hope or Natal;

'(2) Any child or grandchild of any such person by legitimate descent.'

This definition is open to much criticism, and obviously errs both by way of redundancy and by way of deficiency. It can hardly be treated as a precise equivalent of the term 'British subject' in its older sense, although it is intended to have approximately the same meaning. If the term 'British subject' in the Act of 1865 were to be construed as equivalent to 'European British subject' in the Indian Code of Criminal Procedure, there would appear to be no power under the existing statutory enactments for the Indian Legislature to make laws, say, for a native of Ceylon in the territories of the Nizam. But the language of the Act of 1865 can hardly be construed by the light of an artificial definition which was invented at a subsequent date. And even if the

person was born in the Company's territories; and according to this an Armenian, or the legitimate offspring (being a Christian) of English and native parents, would be a British subject. Nothing positive can be gathered from any of the Acts of Parliament, excepting that 9 Geo. IV, c. 33, appears to negative the position that Muhammadans and Hindus are British subjects; and the Jury Act, 7 Geo. IV, c. 37, seems to be equally opposed to any persons being British subjects but natives, or the legitimate descendants of natives, of the United Kingdom or its acknowledged colonies.'

See also the fifth Appendix to the Report from the Select Committee of the House of Commons in 1831, pp. 1114, 1142, 1146 et seq., 1168, 1178, 1229. 4to edition.

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expression is used in a restricted sense, probably the most reasonable construction to put on it is that it includes all British subjects except natives of India.

The Indian Legislature has also power under special enactments to make laws with extra-territorial operation on particular subjects. For instance, under the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), the Indian Legislature may make laws for the Indian Marine Service with operation throughout Indian waters, which are defined as the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and any territorial waters between those limits.

So also s. 264 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), enacts that if the legislature of a British possession—an expression including India—by any law apply or adapt to any British ships registered at, trading with, or being at any port in that possession, and to the owners and masters and crews of those ships, any provisions in Part II of that Act which do not otherwise so apply, the law is to have effect throughout Her Majesty's dominions and in all places where Her Majesty has jurisdiction in the same manner as if it were enacted in the Merchant Shipping Act itself.

In like manner s. 368 of the Merchant Shipping Act enacts that the Governor-General of India in Council may, by any Act passed for the purpose, declare that all or any of the provisions of Part III of the Merchant Shipping Act, 1894, shall apply to the carriage of steerage passengers upon any voyage from any specified port in British India to any other specified port whatsoever, and may for the purposes of Part III of the Act fix dietary scales, declare the space for steerage passengers, and do other things; and the provisions of any such Act while in force are to have effect without as well as within British India as if enacted by the Merchant Shipping Act itself.

Acts of the Imperial Parliament and charters made under

or confirmed by such Acts have also given courts in British India extra-territorial jurisdiction which could not have been conferred on them by Acts of the Indian Legislature. See e. g. 33 Geo. III, c. 52, s. 156; 9 Geo. IV, c. 74, s. 1; 12 & 13 Vict. c. 96; 23 & 24 Vict. c. 88; 53 & 54 Vict. c. 27.

On the same principle the Slave Trade Act, 1876 (39 & 40 Vict. c. 46), enacts that if any person, being a subject of Her Majesty, or of any prince or State in India in alliance with Her Majesty, shall on the high seas or in any part of Asia or Africa specified by Order in Council in that behalf commit any of certain offences relating to slave trade under the Penal Code, or abet the commission of any such offence, he may be dealt with as if the offence or abetment had been committed in any place within British India in which he may be or may be found; and s. 2 provides that if the Governor-General in Council amends any of those provisions or makes further provisions on the same subject, a copy of the amending Act may be laid before both Houses of Parliament, and then, unless an address is presented to the contrary, the Queen may by Order in Council give the amending provisions the same extra-territorial operation as the provisions amended[1].

The Indian Legislature has exercised its power of legislating for offences committed outside British India, not only by the provisions in the Penal Code noticed above, but also by provisions in the Foreign Jurisdiction and Extradition Act, 1879, and in the Code of Criminal Procedure, 1882.

Section 8 of the Foreign Jurisdiction and Extradition Act, 1879, enacts that—

'The law relating to offences and to criminal procedure for the time being in force in British India shall, subject, as to procedure, to such modifications as the Governor-General in Council from time to time directs, extend—

'(*a*) to all European British subjects in the dominions of princes and States in India in alliance with Her Majesty; and

'(*b*) to all native Indian subjects of Her Majesty in any place beyond the limits of British India.'

[1] See remarks on this enactment in Westlake, Chapters on Principles of International Law, p. 222.

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This section is difficult to construe. The last paragraph is not needed for the purpose of enabling a native of India to be tried in British India by Indian law and in accordance with Indian procedure for an offence committed outside British India, because that power is given by s. 3 of the Indian Penal Code and s. 188 of the Code of Criminal Procedure. And it cannot have been intended that the procedure to be observed in British India should be capable of modification by the executive action of the Governor-General in Council. It seems to mean that a native of India may be tried under the Indian Penal Code and under the Code of Criminal Procedure in any place outside British India, e. g. in Africa. And very possibly this was the intention. It may have been considered desirable to provide for the exercise of extra-territorial jurisdiction over natives of India in parts of Asia which are neither within British India nor within a Native State, and to which the Foreign Jurisdiction Acts of the Imperial Parliament could not conveniently be applied, and even for the exercise of such jurisdiction in Africa, in the event of another Abyssinian expedition occurring. But if this provision is re-enacted, there ought to be a saving for orders made under the Foreign Jurisdiction Act of the Imperial Parliament. Otherwise there may be a conflict of jurisdiction in places like Zanzibar.

Section 188 of the Code of Criminal Procedure, 1882, enacts that—

'When an European British subject commits an offence in the dominions of a prince or State in India in alliance with Her Majesty, or when a native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

'Provided that no charge as to any such offence shall be inquired into in British India unless the political agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

'Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings

against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.'

It will be observed that by these enactments the Indian Legislature has gone much further than Parliament in the exercise of its powers with respect to extra-territorial offences. The construction of the enactments has caused difficulty in the Indian courts, and the reported decisions are not wholly consistent with each other[1].

The general conclusions appear to be—

Conclusions as to general powers of Indian Legislature.

1. The Indian Legislature is not in any sense an agent or delegate of the Imperial Parliament[2], but its powers are limited by the terms of the Acts of Parliament by which those powers are conferred.

2. The Indian Legislature has power to make laws—

(*a*) for native Indian subjects of Her Majesty or native Indian soldiers in Her Majesty's Indian forces in any part of the world; and

(*b*) for British subjects, in a narrow sense, and servants of the Government, in Native States.

3. Whether the Indian Legislature has power to make laws for British subjects, not being either European British subjects or natives of India, in Native States, or to make laws for British subjects not being natives of India, or for servants of the Government, as such, in States outside India as defined by the Interpretation Act and by the Indian General Clauses

[1] See and compare the following cases: *R.* v. *Pirtal*, (1873) 10 Bom. Rep. 356; *R.* v. *Lukhya Govind*, (1875) I. L. R. 1 Bom. 50; *Empress* v. *Surmook Singh*, (1879) I. L. R., 2 All. 218; *Empress* v. *S. Moorga Chatty*, (1881) I. L. R. 5 Bom. 328; *Siddhu* v. *Biligiri*, (1884) I. L. R. 7 Mad. 554; *Queen Empress* v. *Edwards*, (1884) I. L. R. 9 Bom. 333; *Queen* v. *Abdul Latib*, (1885) I. L. R. 10 Bom. 186; *Gregory* v. *Vudakasi Kanjani*, (1886) I. L. R. 10 Mad. 21; *Queen Empress* v. *Mangal Takchand*, (1886) I. L. R. 10 Bom. 274; *Queen Empress* v. *Kirpal Singh*, (1887) I. L. R. 9 All. 523; *Queen Empress* v. *Daya Bhima*, (1888) I. L. R. 13 Bom. 147; *Re Hayes*, (1889) I. L. R. 12 Mad. 39; *Queen Empress* v. *Natwarai*, (1891) I. L. R. 16 Bom. 178; *Queen Empress* v. *Ganpatras Ram Chandra*, (1893) I. L. R. 19 Bom. 105.

[2] *R.* v. *Burah*, L. R. 3 App. Cas. 889.

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Act, that is to say, in places which are not either in British India or in the territory of a Native State, is open to question, and the doubts on these points cannot be satisfactorily removed except by Parliamentary legislation.

4. Except in these cases, and except in pursuance of special enactments, such as the Indian Marine Service Act, the operation of Acts of the Indian Legislature is strictly territorial, and extends only to persons and things within British India.

5. The Indian Legislature has gone further than Parliament in the exercise of the extra-territorial powers which it possesses.

Extra-territorial powers of governor-general in executive capacity.

But the Governor-General in Council has in his executive capacity extra-territorial powers far wider than those which may be exercised by the Indian Legislature. By successive charters and acts extensive powers of sovereignty have been delegated by the English Crown, first, to the East India Company, and afterwards to the Governor-General in Council as its successor. The Governor-General in Council is the representative in India of the British Crown, and as such can exercise under delegated authority the powers incidental to sovereignty with reference both to British India and to neighbouring territories, subject to the restrictions imposed by Parliamentary legislation and to the control exercised by the Crown through the Secretary of State for India. Thus he can make treaties and conventions with the rulers, not only of Native States within the boundaries of what is usually treated as India, but also of adjoining States which are commonly treated as extra-Indian, such as Afghanistan and Nepaul, and can acquire and exercise within the territories of such States powers of legislation and jurisdiction similar to those which are exercised by the Crown in foreign countries in accordance with the Foreign Jurisdiction Acts and the Orders in Council under them, and extending to persons who are not subjects of the Queen.

The existence of these powers is declared, and their exercise

Indian Foreign Jurisdiction and Extradition Act.

is to some extent regulated, by the Foreign Jurisdiction and Extradition Act, 1879, of the Government of India. This Act recites, in terms similar to those of the corresponding Act of Parliament, that by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; that such power and jurisdiction have from time to time been delegated to political agents and others acting under the authority of the Governor-General in Council; and that doubts having arisen how far the exercise of such powers and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872 (repealed and reproduced by the Act of 1879), was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals.

The Act of 1879 is declared, by s. 1, to extend—

(*a*) to the whole of British India;

(*b*) to all native Indian subjects of Her Majesty beyond the limits of British India; and

(*c*) to all European British subjects within the dominions of princes and States in India in alliance with Her Majesty;

thus following the powers of legislation conferred by the Indian Councils Act, 1861, and the subsequent amending Acts, except that it confers no powers with respect to servants of the Government, as such, outside British India[1].

Section 4 says that—

'The Governor-General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government in such manner and to such extent as the Governor-General in Council from time to time thinks fit.'

[1] See *Queen Empress* v. *Matwarai*, (1891) I. L. R. 16 Bom. 178.

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The powers and jurisdiction referred to in this section are recognized and confirmed by, but are not derived from, the Indian Legislature. That Legislature gives them its support to the extent of its powers, and could, to that extent, restrict as well as regulate their exercise. The support is useful as far as it goes, because the Indian Legislature has power to bind the British Indian courts, and can regulate the mutual relations of British Indian and extra-territorial courts and provide for their mutual co-operation. But the jurisdiction exists irrespectively of the support, and, in order to cut down and restrict the range of powers transcending the sphere of the Indian Legislature, much clearer words would appear to be required than are contained in the Act of 1879. It is, however, unfortunate that the language used in s. 4 was not declaratory, as in the corresponding section of the English Act (53 & 54 Vict. c. 37, s. 1), and that appropriate saving words were not inserted in the Act for the purpose of showing that the limitations in s. 1 did not restrict the powers mentioned in s. 4.

The Act then goes on to enact (s. 5) that a notification in the Gazette of India of the exercise or delegation of any such power or jurisdiction, and of certain matters relating thereto, is to be conclusive proof of the truth of the matters stated in the notification; and (s. 6) that the Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, to be a justice of the peace in or for any country or place within which the Governor-General in Council has jurisdiction.

Section 8, as noticed above, extends the law relating to offences and to criminal procedure for the time being in force in British India, subject to certain modifications, to all European British subjects in Native States, and to all native Indian subjects of Her Majesty in any place beyond the limits of British India.

It is to be observed that s. 8, as distinguished from s. 4, is clearly enactment and not declaration, and, as such, is

restricted, and properly restricted, by the limits recognized and reproduced in s. 1.

The laws so applied by s. 8 to special classes of persons apply by virtue of that section itself, and do not require or admit of the intervention of any order of the Governor-General in Council, except for the purpose of making modifications in procedure.

But the powers exercised by virtue of the jurisdiction recognized in s. 4 are, like the corresponding powers in cases to which the English Foreign Jurisdiction Act applies, exercised by orders of the Governor-General in Council corresponding to the Orders in Council made by the Queen in cases under the Act of Parliament. These orders usually take the form of an order, notified in the Gazette of India, constituting civil and criminal courts of different grades, and declaring the law which they are to administer, that law consisting of certain British Indian Acts with specified modifications. The orders thus notified for different Native States are to be found in volumes issued by the Legislative Department. But it must be borne in mind that they proceed, not from the Indian Legislature, but from the Governor-General in Council in his executive capacity. The distinction is recognized by the Legislative Department volumes[1], which discriminate between enactments of the Indian Legislature which apply 'proprio vigore' to certain classes of persons in Native States, and enactments which are, in the official language of India, 'applied[2]' to certain portions of the territory of Native States, that is to say, become law by virtue of the governor-general's order[3].

[1] Lists of British Enactments in force in Native States.

[2] See Minutes by Sir H. S. Maine, No. 91.

[3] The Indian Foreign Jurisdiction and Extradition Act, 1879, has been amended by subsequent Acts (X of 1882, XII of 1891, and V of 1896). It would seem desirable to consolidate the existing enactments, and to take the opportunity of removing the ambiguities to which attention has been directed.

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Territories in which jurisdiction is exercisable.

It remains to be considered to what territories, and to what classes of persons and cases within those territories, the jurisdiction thus exercised may and does extend.

It will be observed that the jurisdiction declared by s. 4 of the Indian Act of 1879 to be exercisable is said to be 'any power or jurisdiction which the Governor-General in Council for the time being has within any country or place beyond the limits of British India.' What those countries and places are is a question which depends on the political arrangements for the time being in force. Parliament has recently defined India[1] as meaning 'British India, together with any territories of any native prince or chief under the suzerainty of Her Majesty, exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.' It has thus substituted the term 'suzerainty' for the older expression 'alliance' or 'subordinate alliance' as corresponding more accurately to the existing relations between the Governments of India and the Native States. But the actual extent of India at any given time must always be a political question. And there may often be territories on the external fringe of, or outside, 'India' within which it may be doubtful whether the Crown has power and jurisdiction, and whether and how far that power and jurisdiction is delegated to the governor-general. But with respect to the ordinary Native States of India there can be no room for doubt that the British Crown has power and jurisdiction of the kind described, and that this power and jurisdiction is delegated to the Governor-General in Council. The governor-general, as representative of the paramount power in India, has and exercises extensive sovereign powers over the Native States of India. Those Native States have often, and not improperly, been described as protectorates. But they are protectorates in a very special sense. They

[1] Interpretation Act, 1889, s. 18 (5). The same definition has now been adopted by the Indian Legislature in the General Clauses Act, 1897 (Act X of 1897, s. 3 (27)).

differ materially from the European protectorates to which reference is made in text-books of European international law. They also differ from the protectorates established over uncivilized tribes and the territories occupied by them in Africa, because in all the Indian Native States, with the exception of some wild regions on the frontier, there is some kind of organized government to undertake the functions of internal administration. For the purposes of municipal law their territory is not British territory, and their subjects are not British subjects. But they have none of the attributes of external sovereignty, and for international purposes their territory is in the same position as British territory and their subjects are in the same position as British subjects. On the other hand, it may be doubted whether the subject of an Indian Native State would be an alien within the meaning of s. 7 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), so as to be capable of obtaining a certificate of naturalization under that section. Finally, the rulers of Indian Native States owe political allegiance to the Queen Empress. These peculiarities have an important bearing on the jurisdiction exercisable over European foreigners within the territories of those States.

Classes of persons to which jurisdiction extends.

In point of fact the jurisdiction of the Governor-General in Council within the territories of Native States is exercised—

(*a*) over European British subjects in all cases;

(*b*) over native Indian subjects in certain cases;

(*c*) over all classes of persons, British or foreign, within certain areas.

It is the policy of the Government of India not to allow native courts to exercise jurisdiction in the case of European British subjects, but to require them either to be tried by the British courts established in the Native State in accordance with the Foreign Jurisdiction and Extradition Act, or to be sent for trial before a court in British India.

The Government of India does not claim similar exclusive jurisdiction over native Indian subjects of Her Majesty when

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The Government of India does not, except within special areas, or under special circumstances, such as during the minority of a native prince, take over or interfere with the jurisdiction of the courts of a Native State in cases affecting only the subjects of that State, but leaves such cases to be dealt with by the native courts in accordance with native laws.

The question as to whether the jurisdiction is exercisable over European foreigners in the territory of a Native State, if it should arise, would doubtless be answered as in the case of African protectorates. Even if consent of the foreigner's Government were held to be a necessary element of the jurisdiction in such cases, the notorious fact that a Native State of India is not allowed to hold diplomatic or other official intercourse with any other Power, and the general recognition by European States of the relation in which every such Native State stands to the British Crown, would doubtless be construed as implying a consent on the part of the Government of any European or American State to the exercise by British courts of jurisdiction. Indeed, for international purposes, as has been said above, the territory of Native States is in the same position as the territory of British India.

There are certain areas within which full jurisdiction has been ceded to the Government of India, and within which jurisdiction is accordingly exercised by courts and officers of the Government of India over all classes of persons as if the territory were part of British India. The most conspicuous instance of this is the district known as the Berars, or as the

Hyderabad Assigned Districts, which is not in British India, but is administered precisely as if it were in British India. The same appears to be the position of the residencies and other stations in the occupation of political officers[1], and of cantonments in the occupation of British troops.

Under arrangements which have recently been made with the Governments of several Native States, 'full jurisdiction' has been ceded in railway lands within the territories of those States. The effect of one of these grants was considered in a case which came recently before the Judicial Committee of the Privy Council[2]. In this case a magistrate at Simla issued a warrant for the arrest of a subject of the Nizam, in respect of an offence alleged to have been committed by him at Simla. The warrant was executed within the area of railway lands over which 'full jurisdiction' had been conceded by the Nizam, and the question was whether the execution of the warrant under these circumstances was legal. It was held that for the purpose of ascertaining the nature and extent of the 'full jurisdiction' conceded, reference must be made to the correspondence which had taken place between the Government of India and the Nizam, as showing the nature of the agreement between them, that on the true construction of this correspondence, the jurisdiction conceded must be limited to jurisdiction required for railway purposes, and that consequently the execution of the warrant was illegal.

The position of the residencies and cantonments in the territories of Native States has often been compared to the extra-territorial character recognized by European international law as belonging to diplomatic residencies and to cantonments in time of war. There is an analogy between the cases, but it is unnecessary to base the jurisdiction exercised in those places on that analogy. As has been seen above, the jurisdiction exercisable by the courts of a protecting State within the

[1] As to the civil and military station of Bangalore, see *Re Hayes*, (1888) I. L. R. 12 Mad. 39.

[2] *Muhammed Yusuf-Ud-Din* v. *The Queen Empress* (July 7, 1897).

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territories of a protected State may extend to all or any of the subjects, either of the protecting State or of the protected State, and, subject to certain limitations, to persons not belonging to either of these categories. The extent to which, and the cases in which, the jurisdiction is exercised over particular classes of persons are to be determined by agreement between the State which exercises the jurisdiction and the State within whose territories the jurisdiction is exercised, and, in the absence of express agreement, are to be inferred from usage and from the circumstances of the case.

In connexion with this subject, it may be useful to quote Sir Henry Maine's remarks in his minute on Kathiawar[1]:—

'It may perhaps be worth observing that, according to the more precise language of modern publicists, "sovereignty" is divisible, but "independence" is not. Although the expression "partial independence" may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government. My reason for offering a remark which may perhaps appear pedantic is that the Indian Government seems to me to have occasionally exposed itself to misconstruction by admitting or denying the independence of particular States, when, in fact, it meant to speak of their sovereignty.

'The mode or degree in which sovereignty is distributed between the British Government and any given Native State is always a question of fact, which has to be separately decided in each case, and to which no general rules apply. In the more considerable instances, there is always some treaty, engagement, or sunnud to guide us to a conclusion, and then the only question which remains is, what has become of the sovereign rights which are *not* mentioned in the Convention? Did the British Government reserve them to itself, or did it intend to leave the Native Power in the enjoyment of them? In the case of Kattywar the few ambiguous documents which bear on the matter seem to me to point to no certain result, and I consider that the distribution of the sovereignty can only be collected from the *de facto* relations of these States with the British Government, from the course of action which has been followed by this Government towards them. Though we have to interpret this evidence ourselves, it is in itself perfectly legitimate.

'It appears to me, therefore, that the Kattywar States have been permitted to enjoy several sovereign rights, of which the principal—and it is a well-known right of sovereignty—is immunity from foreign laws. Their chiefs have also been allowed to

[1] Minutes by Sir H. S. Maine, No. 22, at p. 37.

exercise (within limits) civil and criminal jurisdiction, and several of them have been in the exercise of a very marked (though minor) sovereign right—the right to coin money. But far the largest part of the sovereignty has obviously resided in practice with the British Government, and among the rights which it has exercised appears to me to be an almost unlimited right of interference for the better order of the States. I mean that, if the interferences which have already taken place be referred to principles, those principles would justify any amount of interposition, so long as we interpose in good faith for the advantage of the chiefs and people of Kattywar, and so long as we do not disturb the only unqualified sovereign right which these States appear to possess—the right to immunity from foreign laws.'

From what has been said above it will be seen that the powers exercised by the British Government, or by the Government of India as its representative, in territories where lower types of government or civilization prevail, may vary both in nature and in extent between very wide limits. In some places there is merely the exercise of a personal jurisdiction over British subjects, or certain other limited classes of persons. In others the functions of external sovereignty are exercised or controlled. In others a much larger share of the functions of sovereignty, both external and internal, has been taken over, and this share may be so large as to leave to the previous ruler of the territory, if such there be, nothing more than a bare, nominal, or dormant sovereignty.

In dealing with the various positions thus arising, it is important to remember that different considerations will apply according as the position is approached from the point of view of international law, or from the point of view of municipal law.

Where the external sovereignty of any State is exercised or controlled by the British Government, a third State will almost certainly claim to regard, and will, from an international point of view, be entitled to regard, the territory of the first State as being for many purposes practically British. Thus if persons in that territory made it a basis for raids on the territory of an adjoining foreign State, that State would

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hold the British Government accountable. And it would be no answer to say that the arrangements entered into by the British Government with the ruler of that territory preclude British interference in such cases. The reply would be, 'We know nothing of these arrangements, except that they debar us from obtaining protection or redress, except through you, and consequently we must treat the territory as practically British.' A similar position would arise if a subject of that foreign State were grossly ill-used within the territory, and were denied justice by the persons exercising authority there.

The view taken by municipal law is widely different. For the purposes of that law a territory must be either British or foreign, that is to say, not British, and a sharp line must be drawn between the two. In some cases it may be a difficult operation to draw this line, but it must be drawn by the courts and by the executive authorities as best they can. To allow the existence of a penumbra between British and non-British territory would cause endless confusion. The judicial and executive authorities must be in a position to say whether, for purposes of municipal law, a particular territory is within or without 'Her Majesty's dominions' or 'British India.' And the legislative authorities must be in a position to determine whether the legislation for such a territory is to be carried out through the ordinary legislative organs, or through the machinery recognized and supported by the Foreign Jurisdiction Acts. Again, important questions of status may turn on the question whether the territory in which a man is born is British territory or not. To determine whether a particular territory is British or not, it may be necessary to look not merely to the powers exercised within it, but also to the manner in which, and the understandings on which, those powers have been acquired and are being exercised. Where the acquisition dates from long back, difficult questions may arise. But in the case of recent acquisitions there will usually be no serious difficulty in determining whether what has been acquired is merely a right to exercise certain sovereign powers

within a particular tract, or whether there has been such a transfer of sovereignty over the tract as to convert it into British territory.

The general conclusions appear to be:—

Conclusions as to extra-territorial powers of governor-general.

1. The extra-territorial powers of the Governor-General of India are much wider than the extra-territorial powers of the Indian Legislature, and are not derived from, though they may be regulated or restricted by, English or Indian Acts.

2. Those powers are exercisable within the territories of all the Native States of India. Whether they are exercisable within the territories of any State outside India is a question which depends on the arrangements in force with the Government of that State, and on the extent to which the powers of the Crown exercisable in pursuance of such arrangements have been delegated to the governor-general.

3. The jurisdiction exercisable under those powers might be made to extend to all British subjects and to all subjects of the State within which the jurisdiction is exercised, and also, in the case of Native States of India, to foreigners.

4. The classes of persons and cases to which the jurisdiction actually applies depend on the agreement, if any, in force with respect to its exercise, and, in the absence of express agreement, on usage and the circumstances of the case, and may be defined, restricted, or extended accordingly by the instrument regulating the exercise of the jurisdiction.

CHAPTER VIII

ILLUSTRATIVE DOCUMENTS

I. The Charter of Queen Elizabeth.

Charter granted by Queen Elizabeth to the East India Company.
(Dated the 31st December, in the 43rd year of Her Reign.)

Anno Domini, 1600.

ELIZABETH, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith, &c. To all our Officers, Ministers, and Subjects, and to all other People, as well within this our Realm of England as elsewhere, under our Obedience and Jurisdiction, or otherwise, unto whom these our Letters Patents shall be seen, showed, or read, greeting. Whereas our most dear and loving Cousin, George, Earl of Cumberland, and our well-beloved Subjects, Sir John Hart, of London, Knight, Sir John Spencer, of London, Knight, Sir Edward Michelborne, Knight, William Cavendish, Esq.; Paul Banning, Robert Lee, Leonard Hollyday, John Watts, John Moore, Edward Holmeden, Robert Hampson, Thomas Smith, and Thomas Campbell, Citizens and Aldermen of London; Edward Barker, Esq.; Thomas Marsh, Esq.; Samuel Backhouse, Esq.; James Lancaster, Richard Staper, Thomas Cordell, William Garway, Oliver Stile, William Quarts, Bartholomew Barnes, William Offely, Robert Chamberlain, John Harvey, Richard Wiseman, William Stone, Francis Cherry, Thomas Allabaster, Richard Barrett, John Swinnarton the Younger, Thomas Garway, William Romney,

James Bean, John Eldred, Andrew Banning, Edward Leaving, Thomas Juxon, Nicholas Leat, John Woollestenholm, Nicholas Pierd, William Chamber, Rowland Blackhouse, Humphrey Smith, Robert Sandye, Henry Robinson, Richard Pointell, John Heylord, William Harrison, Humphrey Stile, Humphrey Robinson, Nicholas Ferror, Thomas Farrington, John Comb, Robert Offely, Roger How, John Hewitt, James Turner, Morrice Abbott, Robert Carrell, Robert Brooke, Richard Chamberlaine, George Chamberlaine, Leonard White, John Cornelius, Ralph Busby, William Jenning, Giles Parslow, Robert Bell, Thomas White, Nicholas Ling, William Palmer, Ellis Cripps, George Bowles, Nicholas Cripps, John Merrick, Humphrey Handford, Thomas Simmons, Robert Cocks, William Walstall, John Humphrey, Thomas Bostock, Bartholomew Holland, Richard Cock, William Walton, William Freeman, Thomas Southake, John Frier, Francis Dent, Richard Ball, Richard Pears, Roger Henning, Robert Cobe, Robert Robinson, Francis Evington, Francis Taylor, Thomas Westrowe, John Middleton, Robert Gore, Ralph Gore, William Cater, George Cater, John Busbridge, Thomas Hauton, William Bond, Merchant Taylor of London, William Cotton, John Stockley, Roger Arfield, Augustine Skinner, Richard Wiche, Robert Towertson, Richard Tailby, Robert Middleton, Robert Bateman, Richard Costan, Robert Walldoe, Richard Wragge, John Wragge, William Dale, Lawrence Walldoe, Henry Bridgman, Samuel Armitage, Edward Harrison, Edmund Nicholson, Clement Moseley, John Newman, Humphrey Wallcot, Thomas Richardson, Thomas Bothby, John Cowchman, Reginald Green, Richard Burrell, Robert Mildmay, William Hind, George Chandler, Edward Lutterford, William Burrell, Stephen Harvey, Thomas Henshaw, William Ferris, William Adderley, William Hewit, William Fisher, Joseph Talbanck, Nicholas Manley, Nicholas Salter, William Willaston, William Angell, Nicholas Barnsley, John Hawkins, Roger Dye, Richard Clarke, Thomas Hewit, George Whitemore, Henry Polstead, William Grenwell, Robert Johnson, Bartholomew

CH. VIII. Haggett, Humphrey Bass, Robert Buck, Ambrose Wheeler, William Hale, Richard Hall, jun., John Hodgson, Alphonsus Fowl, Edmund Spencer, Robert Dewsey, Richard Piott, William Bonham, Edward Barkham, George Coles, Ralph Haymor, James Cullymer, Samuel Hare, George Utley, Gregory Allen, Henry Archer, Jeffery Kubye, John Cason, Richard Beale, Thomas Shipton, John Fletcher, Thomas Talbot, Robert Pennington, Humphrey Millward, Richard Hearne, Ralph Allyn, John Brooke, Anthony Gibson, Robert Kayes, Hugh Crompton, Richard Washer, George Holman, Morrice Luelling, Richard Parsons, Francis Barker, William Turner, John Greenwood, Richard Dean, Richard Ironside, George Smythe, James Dunkin, Edward Walter, Andrew Chamberlain, Robert Stratford, Anthony Stratford, William Millett, Simon Laurence, Thomas Liddall, Stephen Hodson, Richard Wright, William Starkey, William Smith, John Ellecot, Robert Bailey, and Roger Cotton, have of our certain knowledge been Petitioners unto us, for our Royal Assent and Licence to be granted unto them, that they, at their own Adventures, Costs, and Charges, as well for the Honour of this our Realm of England, as for the Increase of our Navigation, and Advancement of Trade of Merchandize, within our said Realms and the Dominions of the same, might adventure and set forth one or more Voyages, with convenient Number of Ships and Pinnaces, by way of Traffic and Merchandize to the East-Indies, in the Countries and Parts of Asia and Africa, and to as many of the Islands, Ports and Cities, Towns and Places, thereabouts, as where Trade and Traffic may by all likelihood be discovered, established or had; divers of which Countries, and many of the Islands, Cities and Ports thereof, have long since been discovered by others of our Subjects, albeit not frequented in Trade of Merchandize. Know ye, therefore, that we, greatly tendering the Honour of our Nation, the Wealth of our People, and the Encouragement of them, and others of our loving Subjects in their good Enterprizes, for the Increase

of our Navigation, and the Advancement of lawful Traffick, to the Benefit of our Common Wealth, have of our especial Grace, certain Knowledge, and mere Motion, given and granted, and by these Presents, for us, our Heirs and Successors, do give and grant unto our said loving Subjects, before in these Presents expressly named, that they and every of them from henceforth be, and shall be one Body Corporate and Politick, in Deed and in Name, by the Name of The Governor and Company of Merchants of London, Trading into the East-Indies, and them by the Name of The Governor and Company of Merchants of London, Trading into the East-Indies, one Body Corporate and Politick, in Deed and in Name, really and fully, for us, our Heirs and Successors, we do order, make, ordain, constitute, establish and declare, by these Presents, and that by the same Name of Governor and Company of Merchants of London, Trading into the East-Indies, they shall have Succession, and that they and their Successors, by the Name of The Governor and Company of Merchants of London, Trading into the East-Indies, be and shall be, at all Times hereafter, Persons able and capable in Law, and a Body Corporate and Politick, and capable in Law to have, purchase, receive, possess, enjoy and retain, Lands, Rents, Priviledges, Liberties, Jurisdictions, Franchises and Hereditaments of whatsoever Kind, Nature, and Quality so ever they be, to them and their Successors. And also to give, grant, demise, alien, assign and dispose Lands, Tenements and Hereditaments, and to do and execute all and singular other Things, by the same Name that to them shall or may appertain to do. And that they and their Successors, by the Name of The Governor and Company of Merchants of London, Trading into the East-Indies, may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever Courts and Places, and before whatsoever Judges and Justices, and other Persons and Officers, in all and singular Actions, Pleas, Suits, Quarrels, Causes and Demands whatsoever, of whatsoever Kind, Nature

CH VIII. or Sort, in such Manner and Form, as any other our liege People of this our Realm of England, being Persons able and capable in Law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead and be impleaded, answer and be answered, defend and be defended, release and be released, do permit and execute. And that the said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, may have a Common Seal, to serve for all the Causes and Business of them and their Successors. And that it shall and may be lawful to The said Governor and Company, and their Successors, the same Seal, from Time to Time, at their Will and Pleasure, to break, change, and to make new or alter, as to them shall seem expedient. And further, we will, and by these Presents, for us, our Heirs and Successors, we do ordain, that there shall be from henceforth one of the same Company to be elected and appointed, in such Form, as hereafter in these Presents is expressed, which shall be called The Governor of the said Company, and that there shall be from henceforth Twenty-Four of the said Company, to be elected and appointed in such Form, as hereafter in these Presents is expressed, which shall be called The Committees of the said Company, who, together with the Governor of the said Company for the Time being, shall have the Direction of the Voyages, of or for the said Company, and the Provision of the Shipping and Merchandizes thereto belonging, and also the sale of all Merchandizes returned in the Voyages, of or for the said Company, and the managing and handling of all other Things belonging to the said Company; and for the better Execution of this our Will and Grant in this Behalf We have assigned, nominated, constituted and made, and by these Presents, for us, our Heirs and Successors, we do assign, nominate, constitute and make, the said Thomas Smith, Alderman of London, to be the First and present Governor of the said Company, to continue in the said Office, from the Date of these Presents, until another of the said Company shall in due Manner be chosen and sworn

unto the said Office, according to the Ordinances and Provisions hereafter in these Presents expressed and declared, if the said Thomas Smith shall so long live; and also we have assigned, nominated and appointed, and by these Presents, for us, our Heirs and Successors, we do assign, nominate, constitute and make, the said Paul Banning, Leonard Hollyday, John Moore, Edward Holmeden, Richard Staper, Thomas Cordell, William Garway, Oliver Style, James Lancaster, Richard Wiseman, Francis Cherry, Thomas Allabaster, William Romney, Roger How, William Chambers, Robert Sandye, John Eldred, Richard Wiche, John Hylord, John Middleton, John Comb, William Harrison, Nicholas Ling and Robert Bell, to be the Twenty-Four First and Present Committees of the said Company, to continue in the said Office of Committees of the said Company, from the Date of these Presents, for One whole Year next following. And further we will and grant, by these Presents, for us, our Heirs and Successors, unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that it shall and may be lawful to and for The said Governor and Company, for the Time being, or the more part of them, present at any publick Assembly, commonly called the Court, holden for the said Company, the Governor of the said Company being always one, from Time to Time, to elect, nominate, and appoint one of the said Company, to be Deputy to the said Governor, which Deputy shall take a Corporal Oath, before the Governor and Five or more of the Committees of the said Company for the Time being, well, faithfully and truly to execute his said Office of Deputy to the Governor of the said Company, and after his Oath, so taken, shall and may, from Time to Time, in the Absence of the said Governor, exercise and execute the Office of Governor of the said Company, in such Sort as the said Governor ought to do: And further we will and grant, by these Presents, for us, our Heirs and Successors, unto the said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that they or the

Ch. VIII. greater Part of them, whereof the Governor for the Time being or his Deputy to be one, from Time to Time, and at all Times hereafter, shall and may have Authority and Power, yearly and every year, on the First Day of July, or at any Time within Six Days after that Day, to assemble and meet together, in some convenient Place, to be appointed from Time to Time by the Governor, or in his Absence by the Deputy of the said Governor for the Time being, and that they being so assembled, it shall and may be lawful to and for the said Governor, or Deputy of the said Governor, and the said Company for the Time being, or the greater Part of them, which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being, to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole Year, from thence next following, which Person, being so elected and nominated to be Governor of the said Company, as is aforesaid, before he be admitted to the Execution of the said Office, shall take a Corporal Oath before the last Governor, being his Predecessor or his Deputy, and any Six or more of the Committees of the said Company for the Time being, that he shall, from Time to Time, well and truly execute the Office of Governor of the said Company, in all things concerning the same; and that immediately after the said Oath so taken, he shall and may execute and use the said office of Governor of the said Company, for one whole Year, from thence next following: And in like Sort we will and grant, that as well every one above-named to be of the said Company or Fellowship, as all others hereafter to be admitted, or free of the said Company, shall take a Corporal Oath before the Governor of the said Company, or his Deputy for the Time being, to such Effect, as by the said Governor and Company, or the more Part of them, in any publick Court to be held for the said Company, shall be in reasonable Manner set down and devised, before they shall be allowed, or admitted to trade or traffick, as a Freeman of the

said Company. And further we will and grant, by these Presents, for us, our Heirs and Successors, unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that the said Governor, or the Deputy of the said Governor, and the Company and their Successors, for the Time being, or the greater Part of them, whereof the Governor, or the Deputy of the Governor, from Time to Time, to be one, shall and may, from Time to Time, and at all Times hereafter, have Authority and Power, yearly and every Year, on the First Day of July, or at any Time within Six Days after that Day, to assemble and meet together, in some convenient place, to be from Time to Time appointed, by the said Governor of the said Company, or in his Absence, by his Deputy: And that they being so assembled, it shall and may be lawful, to and for the said Governor or his Deputy, and the Company for the Time being, or the greater Part of them, which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being, to be one, to elect and nominate Twenty-Four of the said Company, which shall be Committees of the said Company, for One whole Year, from thence next ensuing, which Persons, being so elected and nominated to be Committees of the said Company, as aforesaid, before they be admitted to the Execution of their said Offices, shall take a Corporal Oath, before the Governor or his Deputy, and any Six or more of the said Committees of the said Company, being their last Predecessors for the Time being, that they and every of them, shall well and faithfully perform their said Office of Committees, in all Things concerning the same, and that immediately after the said Oath so taken, they shall and may execute and use their said Offices of Committees of the said Company, for One whole Year, from thence next following; and moreover our Will and Pleasure is, and by these Presents, for us, our Heirs and Successors, we do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and

CH. VIII. to their Successors, that when and as often as it shall happen, the Governor of the said Company for the Time being, at any Time within One Year, after that he shall be nominated, elected and sworn to the Office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said Office, which Governor, not demeaning himself well in his said Office, we will to be removeable at the Pleasure of the said Company, or the greater Part of them, which shall be present, at any of their publick Assemblies, commonly called their General Court, holden for the said Company, that then and so often it shall and may be lawful, to and for the Residue of the said Company for the Time being, or the greater Part of them, within convenient Time after the Death or removing of any such Governor, to assemble themselves in such convenient Place as they shall think fit, for the Election of the Governor of the said Company; and that the said Company, or the greater Part of them, being then and there present, shall and may, then and there, before their Departure from the said Place, elect and nominate one other of the said Company, to be Governor of the same Company, in the Place or Stead of him that so died, or was so removed, which Person, being so elected, and nominated to the Office of Governor of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking first a Corporal Oath as is aforesaid, for the due Execution thereof; and this to be done from Time to Time, so often as the Case shall so require. And also our Will and Pleasure is, and by these Presents, for us, our Heirs and Successors, we do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and to their Successors, that when and as often as it shall happen, any of the Committees of the said Company for the Time being, at any Time within One Year, next after that they or any of them shall be nominated, elected, and sworn to the Office of Committees of the said Company, as is aforesaid, to die or be removed from the said Office, which Committees, not demeaning them-

selves well in their said Office, we will to be removeable, at the Pleasure of The said Governor and Company, or the greater Part of them, whereof the Governor of the said Company for the Time being, or his Deputy for the Time being, to be one, that then and so often, it shall and may be lawful, to and for The said Governor and Company for the Time being, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, within convenient Time, after the Death or removing of any of the said Committees, to assemble themselves in such convenient Place, as is or shall be usual and accustomed, for the Election of The Governor of the said Company, or where else The Governor of the said Company for the Time being, or his Deputy, shall appoint; and that The said Governor and Company, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, being then and there present, shall and may then and there, before their Departure from the said Place, elect and nominate one or more of the said Company, to be Committees of the same Company, in the Places and Steads, Place or Stead, of him or them that so died, or were or was so removed, which Person or Persons, so elected and nominated to the Office or Offices of Committee, or Committees, of the said Company, shall have and exercise the said Office and Offices, for and during the Residue of the said Year, taking first a Corporal Oath as is aforesaid, for the due Execution thereof, and this to be done from Time to Time, so often as the Case shall require. And further we do, by these Presents, for us, our Heirs and Successors, will and grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that they, and all that are or shall be of The said Company of Merchants of London, Trading into the East-Indies, and every of them, and all the Sons of them, and every of them, at their several Ages of One and Twenty Years or upwards: And further, all such the Apprentices, Factors or Servants of them, and of every of them, which hereafter shall be employed by The said

CH. VIII. Governor and Company, in the said Trade of Merchandize, of or to the East-Indies, beyond the Seas, or any other the Places aforesaid, in any part of the said East-Indies, or other the Places aforesaid, shall and may, by the Space of Fifteen Years, from the Feast of the Birth of our Lord God last past, before the Date hereof, freely traffick and use the Trade of Merchandize, by Seas, in and by such Ways and Passages already found out and discovered, or which hereafter shall be found out and discovered, as they shall esteem and take to be fittest, into and from the said East-Indies, in the Countries and Parts of Asia and Africa, and into and from all the Islands, Ports, Havens, Cities, Creeks, Towns and Places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the Streights of Magellan, where any Trade or Traffick of Merchandize may be usedor had, and to and from every of them, in such Order, Manner, Form, Liberty and Condition, to all Intents and Purposes, as shall be, from Time to Time, at any publick Assembly or Court, held by or for The said Governor and Company, by or between them of the said Fellowship or Company of Merchants of London, Trading into the East-Indies, or the more Part of them, for the Time being, present at such Assembly or Court, the Governor, or his Deputy, being always present at such Court or Assembly, limited and agreed, and not otherwise, without any Molestation, Impeachment, or Disturbance, any Statute, Usage, Diversity of Religion or Faith, or any other Cause or Matter whatsoever, to the contrary notwithstanding: So always the same Trade be not undertaken nor addressed to any Country, Island, Port, Haven, City, Creek, Town or Place, already in the lawful and actual Possession of any such Christian Prince or State, as at this present is, or at any Time hereafter shall be in League or Amity with us, our Heirs or Successors, and who doth not or will not accept of such Trade, but doth overtly declare and publish the same to be utterly against his or their Good-Will and Liking. And further our Will and Pleasure is, and by these Presents,

for us, our Heirs and Successors, we do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and to their Successors, that it shall and may be lawful, to and for The said Governor and Company, and their Successors, from Time to Time to assemble themselves, for or about any the Matters, Causes, Affairs or Businesses of the said Trade, in any Place or Places, for the same convenient, during the said Term of Fifteen Years, within our Dominions or elsewhere, and there to hold Court for the said Company, and the Affairs thereof; and that also it shall and may be lawful, to and for them, or the more Part of them, being so assembled, and that shall then and there be present, in any such Place or Places, whereof the Governor or his Deputy for the Time being, to be one, to make, ordain, and constitute such, and so many reasonable Laws, Constitutions, Orders and Ordinances, as to them, or the greater Part of them, being then and there present, shall seem necessary and convenient, for the good Government of the same Company, and of all Factors, Masters, Mariners and other Officers, employed or to be employed in any of their Voyages, and for the better Advancement and Continuance of the said Trade and Traffick, and the same Laws, Constitutions, Orders and Ordinances, so made, to put in use and execute accordingly, and at their Pleasure to revoke or alter the same, or any of them, as Occasion shall require; and that The said Governor and Company, so often as they shall make, ordain or establish any such Laws, Constitutions, Orders or Ordinances, in Form aforesaid, shall and may lawfully impose, ordain, limit and provide such Pains, Punishments and Penalties, by Imprisonment of Body, or by Fines and Amerciaments, or by all or any of them, upon and against all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances, or any of them, as to The said Governor and Company for the Time being, or the greater Part of them, then and there being present, the said Governor, or his Deputy, being always one, shall seem necessary, requisite and convenient, for the

CH. VIII. Observation of the same Laws, Constitutions, Orders and Ordinances; and the same Fine and Amerciaments shall and may levy, take and have, to the Use of The said Governor and Company, and their Successors, without the Impediment of us, our Heirs or Successors, or of any the Officers or Ministers of us, our Heirs or Successors, and without any Account thereof, to us, our Heirs or Successors, to be rendered or made; all and singular which Laws, Constitutions, Orders and Ordinances, so as aforesaid to be made, we will to be duly observed and kept, under the Pains and Penalties therein to be contained; so always as the said Laws, Orders, Constitutions, Ordinances, Imprisonments, Fines and Amerciaments be reasonable, and not contrary or repugnant to the Laws, Statutes, or Customs of this our Realm. And for as much as The said Governor and Company of Merchants of London, Trading into the East-Indies, have not yet experienced of the Kinds of Commodities and Merchandizes, which are or will be vendible, or to be uttered in the said Parts of the East-Indies, and therefore shall be driven to carry to those Parts, in their Voyages outward, divers and sundry Commodities, which are likely to be returned again into this our Realm: We therefore of our especial Grace, certain Knowledge and mere Motion, for the better encouraging of The said Governor and Company of Merchants of London, Trading into the said East-Indies, and for the Advancement of the said Trade, do grant unto The said Governor and Company, and to their Successors, that they and their Successors, during the Four First Voyages, which they shall make, or set forth, for or towards the said East-Indies, shall and may transport, and carry out of our Realm of England, and the Ports, Creeks and Havens thereof, all such and so much Goods and Merchandizes, being Goods and Merchandizes lawfully passable and transportable out of this Realm, and not prohibited to be transported by any Law or Statute of this Realm, as shall be by them, their Factors or Assigns, shipped in any Ship or Ships, Vessel or Vessels, to be employed in

any of the said Four First Voyages, free of Custom, Subsidy or Poundage, or any other Duties or Payments, to us or our Successors, due or belonging, for the shipping or transporting of the same, or any of them; and yet nevertheless our Will and Pleasure is, and we do, by these Presents, straitly charge and command, that all and every such Goods and Merchandizes, so to be transported out of this Realm, from Time to Time, during the said Four First Voyages, as is aforesaid, shall, from Time to Time, be duly entered by the Customer, Controller, or other Officer of such Port, Creek or Place, where the same Goods and Merchandizes shall happen to be shipped and loaden, before such Time as the same shall be shipped, or loaden, to be transported as is aforesaid: And also of our further especial Grace, certain Knowledge and mere Motion, we do, for us, our Heirs and Successors, grant to and with The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that when and as often, at any Time, during the said Time and Space of Fifteen Years, as any Custom, Poundage, Subsidy, or other Duties, shall be due and payable unto us, our Heirs or Successors, for any Goods, Wares or Merchandizes whatsoever, to be returned out or from any the Islands, Ports, Havens, Cities, Towns or Places aforesaid, unto our Port of London, or any of the Havens, Creeks, Members or Places to the same Port belonging, that the Customers and all other Officers for the Time being, of us, our Heirs or Successors, for or concerning Receipts of Customs, Poundage, Subsidies or other Duties, unto whom it shall appertain, shall upon the Request of The Governor and Company of the said Merchants of London, Trading into the East-Indies, or any their Agents, Factors or Assigns, give unto The said Governor and Company, their Agents, Factors or Assigns, Six Months' Time, for Payment of the One Half, and after those Six Months ended, other Six Months' Time, for the Payment of the other Half, of their said Customs, Poundage, or other Subsidy or Duties, receiving good and sufficient Bonds, with Surety, to the Use

CH. VIII. of us, our Heirs and Successors, for the true Payment of the same accordingly; and upon receipt of the said Bonds, with Surety, from Time to Time, to give unto The said Governor and Company of Merchants of London, Trading into the East-Indies, for the Time being, their Agents, Factors or Assigns, their Cocket or other Warrant, to take out and receive on Land the same Goods, Wares or Merchandizes, by Virtue thereof, without any Disturbance; and that also, as often as at any Time, during the said Time of Years, any Goods, Wares or Merchandizes of The said Governor and Company, for the Time being, laden from our Port of London, or any the Creeks, Members or Places to the same Port belonging, to be transported to or towards any the Islands, Ports, Havens, Cities, Towns or Places aforesaid, shall happen to miscarry or be lost, before their safe Arrival or Discharge in the Ports, for and to which the same shall be sent, that then and so often so much Custom, Poundage, Subsidies, or other Duties, as they answered to us, for the same, before their going forth of our said Ports, Havens or Creeks, shall, after due Proof made, before the Treasurer of England, for the Time being, of the said Loss, and the just Quantity thereof, be, by Virtue hereof, allowed to The said Governor and Company, their Agents or Factors, by Warrant of the said Treasurer, to the said Customers or Officers, in the next Goods, Wares or Merchandizes, that The said Governor and Company, or their Successors, shall or may ship, for or towards those Parts, according to the true Rates of the Customs, Poundage or Subsidies, before paid for the Goods, Wares or Merchandizes, so lost or miscarrying, or any Part thereof. And for that, The said Governor and Company of Merchants of London, Trading into the East-Indies, are like to bring to this our Realm, a much greater Quantity of foreign Commodities, from the Parts of the said East-Indies, than can be spent for the necessary Use of the same our Realm, which of Necessity must be transported into other Countries, and there vended, we, for us, our Heirs and Successors, of our

especial Grace, certain Knowledge and mere Motion, do grant to and with The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that at all Times, from Time to Time, during the Space of Thirteen Months, next after the Discharge of any the same foreign Commodities, so to be brought in, the Subsidies, Poundage, Customs, and other Duties for the same, being first paid or compounded for as aforesaid, it shall be lawful for The said Governor and Company, and their Successors, or any other the natural Subjects of this our Realm, which may or shall buy the same of them, to transport the same in English Bottoms, freely out of this Realm, as well ungarbled as garbled, without Payment of any further Custom, Poundage, or any further Subsidy, to us, our Heirs or Successors, for the same; whereof the Subsidy, Poundage, Customs or other Duties, shall be so formerly paid or compounded for as aforesaid, and so proved; and the said Customer or other Officer or Officers, to whom it shall in that Behalf appertain, for the Time being, by Virtue hereof, shall, upon due and sufficient Proof thereof, made in the Custom-House of or belonging to the same Port of London, give them sufficient Cocket or Certificate for the safe passing out thereof accordingly: And to the End no Deceit be used herein, to us, our Heirs or Successors, Certificate shall be brought from the Collector of the Custom, Subsidy, Poundage or other Duties, inwards, of us, our Heirs or Successors, to the Collector of the Custom, Subsidy, Poundage or other Duties, outward, of us, our Heirs and Successors, that the said Goods, Wares, and Merchandizes, have, within the Time limited, answered their due Custom, Subsidy, Poundage or other duties, for the same inwards: And moreover, we of our further especial Grace, certain Knowledge and mere Motion, have granted, and by these Presents, for us, our Heirs and Successors, do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, that it shall and may be lawful for them, their Factors or Assigns, in their First Voyage or

CH. VIII. Fleet, which is now in preparing for their First Adventure to the said East-Indies, to transport out of this our Realm of England, all such foreign Coin of Silver, either Spanish or other foreign Silver, as they have procured, prepared and gotten, or shall procure, prepare or get, as likewise all such other Coin of Silver, as they have procured, or shall procure, to be coined in our Mint, within our Tower of London, out of such Plate or Bullion, as is or shall be provided, by The said Governor and Company of Merchants of London, Trading into the East-Indies, their Factors or Assigns before the going forth of the same Fleet in this their First Voyage, so as the whole Quantity of Coin, or Monies to be transported, in this their said First Voyage, do not exceed the Value or Sum of £30,000 Sterling, and so as the Sum of £6,000, at the least, Parcel of the said Sum of £30,000, be first coined in our Mint, within our Tower of London, before the same shall be transported as aforesaid, any Law, Statute, Restraint or Prohibition, in that Behalf notwithstanding: And in like Manner, of our like especial Grace, certain Knowledge and mere Motion, we have granted, and by these Presents, do for us, our Heirs and Successors, grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that it shall and may be lawful, to and for The said Governor and Company, and their Successors, after the said First Voyage, set forth yearly, for and during the Residue of the said Term of Fifteen Years, to ship and transport out of this our Realm of England, or Dominions of the same, in any their other Voyages, to or towards any the Parts aforesaid, in Form afore-mentioned, all such foreign Coin of Silver, Spanish or other foreign Silver, or Bullion of Silver, as they shall, during the said Term, bring or cause to be brought into this Realm of England, from the Parts beyond the Seas, either in the same Kind, Sort, Stamp or Fashion, which it shall have when they bring it in, or any other Form, Stamp or Fashion, to be coined within our Mint, within our Tower of London, at their

Pleasure; so as the whole Quantity of Coin or Monies, by them to be transported, in any their said Voyages, during the Residue of the said Terms, do not exceed the Value or Sum of £30,000 in any One Voyage; and so as the Sum of £6,000 at the least, Parcel of the said Sum or Value of £30,000, so to be transported as aforesaid, be first coined, within our said Tower of London, before the same shall be transported in any of the said Voyages, any Law, Statute, Restraint or Prohibition, in that Behalf, in any wise notwithstanding: And further we of our ample and abundant Grace, mere Motion and certain Knowledge, have granted, and by these Presents, for us, our Heirs and Successors, do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that they and their Successors, and their Factors, Servants and Assigns, in the Trade of Merchandize, for them and on their Behalf, and not otherwise, shall, for the said Term of Fifteen Years, have, use and enjoy, the whole entire and only Trade and Traffick, and the whole entire and only Liberty, Use and Privilege of trading and trafficking, and using Feat and Trade of Merchandize, to and from the said East-Indies, and to and from all the Islands, Ports, Havens, Cities, Towns and Places aforesaid, in such Manner and Form as is above mentioned; and that they The said Governor and Company of Merchants of London, Trading into the East-Indies, and every particular and several Person, that now is or that hereafter shall be of that Company, or Incorporation, shall have full and free Authority, Liberty, Faculty, License and Power, in Form aforesaid, to trade and traffick to and from the said East-Indies, and all and every the Parts thereof, in Form aforesaid, according to the Orders, Ordinances and Agreements, hereafter to be made and agreed upon, by The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, or the more Part of them, present at any Court or Publick Assembly, of or for the said Company, the Governor of the said Company, or his Deputy for the

CH. VIII.

CH. VIII. Time being, being always present, at such Court or Assembly, and not otherwise: And for that the Ships, sailing into the said East-Indies, must take their due and proper Times, to proceed in their Voyages, which otherwise, as we well perceive, cannot be performed in the Rest of the Year following: Therefore we of our especial Grace, certain Knowledge and mere Motion, for us, our Heirs and Successors, do grant, to and with The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that, in any Time of Restraint, Six good Ships and Six good Pinnaces, well furnished with Ordnance, and other Munition for their Defence, and Five Hundred Mariners, English Men, to guide and sail in the same Six Ships and Six Pinnaces, at all Times, during the said Term of Fifteen Years, shall quietly be permitted and suffered to depart, and go in the said Voyages, according to the Purport of these Presents, without any Stay or Contradiction, by us, our Heirs or Successors, or by the Lord High Admiral, or any other Officer or Subject of us, our Heirs or Successors, for the Time being, in any wise, any Restraint, Law, Statute, Usage or Matter whatsoever, to the contrary notwithstanding. Provided nevertheless, that if we shall, at any Time within the said Term of Fifteen Years, have just Cause to arm our Navy in Warlike Manner, in Defence of our Realm, or for Offence of our Enemies, or that it shall be found needful to join to the Navy of us, our Heirs or Successors, the Ships of our Subjects, to be also armed for the Wars, to such a Number as cannot be supplied, if the said Six Ships and Six Pinnaces should be permitted to depart, as above is mentioned, then upon Knowledge given, by us, our Heirs or Successors, or by our Admiral to The said Governor and Company, about the 20th Day of the Month of July, or Three Months before The said Governor and Company shall begin to make ready the same Six Ships and Six Pinnaces, that we may not spare the said Six Ships and Six Pinnaces, and the Mariners requisite for them, to be out of our Realm, during the Time that our Navy shall be

upon the Seas, that then the said Governor and Company shall forbear to send Six such Ships and Six Pinnaces, for their Trade and Merchandize, until that we shall revoke or withdraw our said Navy from the said Service: And we of our further Royal Favour, and of our especial Grace, certain Knowledge and mere Motion, have granted, and by these Presents, for us, our Heirs and Successors, do grant to The said Governor and Company of Merchants of London, Trading into the East-Indies, and to their Successors, that the said East-Indies, nor the Islands, Havens, Ports, Cities, Towns or Places thereof, nor of any Part thereof, shall not be visited, frequented or haunted, by any of the Subjects of us, our Heirs or Successors, during the same Term of Fifteen Years, contrary to the true Meaning of these Presents: And by Virtue of our Prerogative Royal, which we will not in that Behalf have argued, or brought in Question, we straitly charge, command and prohibit, for us, our Heirs and Successors, all the Subjects of us, our Heirs and Successors, of what Degree or Quality soever they be, that none of them, directly or indirectly, do visit, haunt, frequent or trade, traffick or adventure, by way of Merchandize, into or from any of the said East-Indies, or into or from any the Islands, Ports, Havens, Cities, Towns or Places aforesaid, other than The said Governor and Company of Merchants of London, Trading into the East-Indies, and such particular Persons as now be, or hereafter shall be of that Company, their Agents, Factors and Assigns, during the said Term of Fifteen Years, unless it be by and with such License and Agreement of the said Governor and Company of Merchants of London, Trading into the East-Indies, in writing first had and obtained, under their Common Seal to be granted, upon Pain that every such Person or Persons, that shall trade or traffick into or from any of the said East-Indies, other than The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, shall incur our Indignation, and the Forfeiture and Loss of the Goods, Merchandizes, and

CH. VIII. other Things whatsoever, which so shall be brought into this Realm of England, or any the Dominions of the same, contrary to our said Prohibition, or the Purport or true Meaning of these Presents, as also the Ship and Ships, with the Furniture thereof, wherein such Goods, Merchandizes, or Things shall be brought; the One Half of all the said Forfeitures to be to us, our Heirs and Successors, and the other Half of all and every the said Forfeitures, we do, by these Presents, of our especial Grace, certain Knowledge and mere Motion, clearly and wholly for us, our Heirs and Successors, give and grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies: And further all and every the said Offenders, for their said Contempt, to suffer Imprisonment, during our Pleasure, and such other Punishment, as to us, our Heirs or Successors, for so high a Contempt, shall seem meet and convenient, and not to be in any wise delivered, until they and every of them shall become bound unto the said Governor for the Time being, in the sum of £1,000 at the least, at no Time then after, during this Present Grant, to sail or traffick into any of the said East-Indies, contrary to our express Commandment in that Behalf herein set down and published: And further, for the better Encouragement of Merchants, Strangers or others, to bring in Commodities into our Realm, we for us, our Heirs and Successors, do grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, that they and their Successors, may, from Time to Time, for any Consideration or Benefit, to be taken to their own Use, grant or give License, to any Person or Persons, to sail, trade or traffick, into or from any the said East-Indies, so as such License be granted or given, before such Goods, Wares and Merchandizes be laid on Land, and so as such License be made by The said Governor and Company of Merchants of London, Trading into the East-Indies, for the Time being, under their Common Seal: And further of our especial Grace, certain Knowledge and mere Motion,

we have condescended and granted, and by these Presents, for us, our Heirs and Successors, we do condescend and grant unto The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that we, our Heirs and Successors, during the said Term of Fifteen Years, will not grant Liberty, License or Power to any Person or Persons whatsoever, contrary to the Tenor of these our Letters Patents, to sail, pass, trade or traffick to the said East-Indies, or into or from the Islands, Ports, Havens, Cities, Towns or Places aforesaid, or any of them, contrary to the true Meaning of these Presents, without the Consent of The said Governor and Company of Merchants of London, Trading into the East-Indies, or the most Part of them: And our Will and Pleasure is, and hereby we do also ordain, that it shall and may be lawful, to and for The said Governor and Company of Merchants of London, Trading into the East-Indies, or the more Part of them, whereof the Governor for the Time being, or his Deputy, to be one, to admit into and to be of the said Company, all such Apprentices, to any of The said Fellowship or Company, and all such Servants and Factors, of and for the said Company, and all such other, as to them, or the most Part of them, present at any Court, held for the said Company, the Governor, or his Deputy, being one, shall be thought fit and agreeable, with the Orders and Ordinances to be made for the Government of the said Company. Provided always, that if any of the Persons, before named and appointed, by these Presents, to be free of The said Company of Merchants of London, Trading into the East-Indies, shall not before the going forth of the Fleet, appointed for this First Voyage, from the Port of London, bring in and deliver to the Treasurer or Treasurers appointed, or which, within the Space of Twenty Days next after the Date hereof, shall be appointed, by the said Governor and Company, or the more Part of them, to receive the Contributions and Adventures, set down by the several Adventurers, in this last and present Voyage, now in hand, to be

CH. VIII. set forth, such Sums of Money as have been, by any of the said Persons, by these presents, nominated to be of the said Company, expressed, set down and written in a Book for that Purpose, and left in the Hands of the said Thomas Smith, Governor of the said Company, or of the said Paul Banning, Alderman of London, and subscribed with the Names of the same Adventurers, under their Hands, and agreed upon to be adventured in the said First Voyage, that then, it shall be lawful for The said Governor and Company, or the more Part of them, whereof the said Governor, or his Deputy, to be one, at any their General Court, or General Assembly, to remove, disfranchise and displace him or them, at their Wills and Pleasures. And the said Governor and Company of Merchants of London, Trading into the East-Indies, for them and their Successors, do, by these Presents, covenant, promise and grant, to and with us, our Heirs and Successors, that they The said Governor and Company, and their Successors, in all and every such Voyages, as they at any Time or Times hereafter, during the said Term, shall make out of this Realm, by Virtue of this our Grant and Letters Patents, the First Voyage only excepted, shall and will, upon every Return which shall be made back again into this Realm, or any of our Dominions, or within Six Months next after every such Return, bring into this our Realm of England, from the said East-Indies, or from some other Parts, beyond the Seas, out of our Dominions as great or greater Value in Bullion of Gold or Silver, or other foreign Coin of Gold or Silver respectively, for every Voyage, the First Voyage only excepted, as shall be by Force of these Presents transported and carried out of this Realm, by them or any of them, in any Kind of Silver abovesaid whatsoever, in any of the said Voyages; and that all such Silver, as by Virtue of this our Grant and Letters Patents, shall be shipped or laden by The said Governor and Company, or their Successors, to be transported out of this Realm, in any of the said Voyages, shall from Time to Time, at the setting forth of every such particular Voyage, be shipped

and laden at the Ports or Havens of London, Dartmouth, or Plymouth, or at some of the same Ports or Havens, and at no other Port or Haven whatsoever, within this our Realm, or the Dominions thereof; and that all and every such Silver, as from Time to Time shall be shipped and loaden in the said Ports of London, Dartmouth, or Plymouth, or any of them, to be by Force of these Presents transported out of this Realm, as is aforesaid, shall from Time to Time be duly entered by the Customer, Controller, Collector, or other Officer to whom it shall appertain, of every such Port or Haven, where the same shall happen to be shipped or laden, in the Custom-Book belonging to the said Port or Haven, before such Time as the same shall be shipped or laden, to be transported as is aforesaid, without any Custom or Subsidy, to be paid for the same; and that in like Manner, all and all Manner of Gold and Silver whatsoever, which shall be brought into this Realm, or any of our Dominions, by The said Governor and Company, or any of them, according to the true Meaning of these Presents, shall likewise be, from Time to Time, duly entered by the Customer, Controller, or other Officer of every such Port, Creek or Place, where the same Gold or Silver shall happen to be unshipped, or brought to Land, before such Time as the same Gold or Silver or any Part thereof, shall be unshipped or brought to Land, as is aforesaid. Provided always, nevertheless, and our Will and Pleasure is, that these our Letters Patents, or any Thing therein contained, shall not in any Sort extend to give or grant any License, Power or Authority unto The said Governor and Company of Merchants of London, Trading into the East-Indies, or to any of them, to undertake or address any Trade unto any Country, Port, Island, Haven, City, Creek, Town or Place, being already in the lawful and actual Possession of any such Christian Prince or State, as at this present is, or at any Time hereafter shall be in League or Amity, with us, our Heirs or Successors, and which doth not, or will not accept of such Trade, but doth overtly declare and publish the same, to be utterly

CH. VIII. against his or their Good-Will and Liking, any Thing before in these Presents contained, to the contrary thereof notwithstanding. Provided also, that if it shall, hereafter appear to us, our Heirs or Successors, that this Grant or the Continuance thereof, in the Whole or in any Part thereof, shall not be profitable to us, our Heirs and Successors, or to this our Realm, that then, and from thenceforth, upon and after Two Years Warning, to be given to the said Company, by us, our Heirs or Successors, under our or their Privy Seal, or Sign Manual, this present Grant shall cease, be void and determined, to all Intents, Constructions and Purposes: And further of our especial Grace, certain Knowledge and mere Motion, we have condescended and granted, and by these Presents, for us, our Heirs and Successors, do condescend and grant to The said Governor and Company of Merchants of London, Trading into the East-Indies, and their Successors, that if at the End of the said Term of Fifteen Years, it shall seem meet and Convenient unto The said Governor and Company, or any the Parties aforesaid, that this present Grant shall be continued, and if that also it shall appear unto us, our Heirs and Successors, that the Continuance thereof shall not be prejudicial or hurtful to this our Realm, but that we shall find the further Continuance thereof profitable for us, our Heirs and Successors, and for our Realm, with such Conditions as are herein mentioned, or with some Alteration or Qualification thereof, that then we, our Heirs or Successors, at the Instance and humble Petition of The said Governor and Company, or any of them, to be made unto us, our Heirs and Successors, will grant and make unto The said Governor and Company, or any of them, so suing for the same; and such other Person and Persons, our Subjects, as they shall nominate and appoint, or shall be by us, our Heirs or Successors, newly nominated, not exceeding in Number Twenty-Four, new Letters Patents, under the Great Seal of England, in due Form of Law, with the like Covenants, Grants, Clauses and Articles, as in these Presents are contained, or with Addition

of other necessary Articles, or changing of these into some other Parts, for and during the full Term of Fifteen Years, then next following; willing hereby and straitly charging and commanding all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Escheators, Constables, Bailiffs, and all and singular other our Officers, Ministers, Liege Men and Subjects whatsoever, to be aiding, favouring, helping and assisting unto The said Governor and Company, and to their Successors, and to their Deputies, Officers, Factors, Servants, Assigns and Ministers, and every of them, in executing and enjoying the Premises, as well on Land as on Sea, from Time to Time, when you or any of you shall thereunto be required, any Statute, Act, Ordinance, Proviso, Proclamation or Restraint, heretofore had, made, set forth, ordained or provided, or any other Matter, Cause or Thing whatsoever, to the contrary in any way notwithstanding; although express Mention of the true yearly Value or Certainty of the Premises, or of any of them, or of any other Gifts or Grants, by us, or any of our Progenitors, to the said Governor and Company of Merchants of London, Trading into the East-Indies, or to any of them, before this Time made, in these Presents is not made, or any Statute, Act, Ordinance, Provision, Proclamation or Restraint, to the contrary heretofore had, made, ordained or provided, or any other Thing, Cause or Matter whatsoever, in any wise notwithstanding. In Witness whereof, we have caused these our Letters to be made Patents: Witness Ourself, at Westminster, the Thirty-first Day of December, in the Three and Fortieth Year of our Reign.

HUBERD.

II. GRANT OF THE DIWANI.

Firmaund[1] *from the King Shah Aalum, granting the Dewanny of Bengal, Behar, and Orissa to the Company,* 1765[2].

At this happy time our royal Firmaund[1], indispensably requiring obedience, is issued; that whereas, in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the Dewanny[3] of the Provinces of Bengal, Behar, and Orissa, from the beginning of the Fussul[4] Rubby[5] of the Bengal year 1172, as a free gift and ultumgau[6], without the association of any other person, and with an exemption from the payment of the customs of the Dewanny, which used to be paid to the Court. It is requisite that the said Company engage to be security for the sum of twenty-six lakhs of Rupees a year for our royal revenue, which sum has been appointed from the Nabob Nudjum-ul-Dowla Behauder, and regularly remit the same to the royal Circar[7]; and in this case, as the said Company are obliged to keep up a large Army for the protection of the Provinces of Bengal, &c., we have granted to them whatsoever may remain out of the revenues of the said Provinces, after remitting the sum of twenty-six lakhs of Rupees to the royal Circar, and providing for the expenses of the Nizamut[8]. It is requisite that our royal descendants, the Visiers, the bestowers of dignity, the Omrahs[9] high in rank, the great officers, the Muttaseddees[10] of the Dewanny, the managers of the business of the Sultanut, the Jaghirdars[11] and Croories[12], as well the future as the

[1] Order, or letters patent.
[2] Printed in Aitchison's Treaties, 3rd ed., vol. i., p. 56.
[3] Right, as diwan, of receiving the revenues. [4] 'Fasl,' the harvest year.
[5] 'Rabi,' spring. [6] 'Altamgha,' royal grant. [7] 'Sarkár,' government.
[8] Administration of police and criminal law. [9] Amirs and nobles.
[10] Clerks. [11] Holders of assignment of revenue.
[12] Collectors of revenue.

present, using their constant endeavours for the establishment of this our royal command, leave the said office in possession of the said Company, from generation to generation, for ever and ever. Looking upon them to be assured from dismission or removal, they must, on no account whatsoever, give them any interruption, and they must regard them as excused and exempted from the payment of all the customs of the Dewanny and royal demands. Knowing our orders on the subject to be most strict and positive, let them not deviate therefrom.

Written the 24th of Sophar, of the 6th year of the Jaloos, the 12th of August, 1765.

Contents of the Zimmun[1].

Agreeably to the paper which has received our Sign Manual, our royal commands are issued, that in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the Dewanny of the Provinces of Bengal, Behar, and Orissa, from the beginning of the Fussul Rubby of the Bengal year 1172, as free gift and ultumgau, without the association of any other person, and with an exemption from the customs of the Dewanny, which used to be paid to the Court, on condition of their being security for the sum of twenty-six lakhs of rupees a year for our royal revenue, which sum has been appointed from the Nabob Nudjum-ul Dowla Behauder; and after remitting the royal revenue and providing for the expenses of the Nizamut, whatsoever may remain we have granted to the said Company:

The Dewanny of the Province of Bengal,

The Dewanny of the Province of Behar,

The Dewanny of the Province of Orissa.

[1] Endorsed abstract.

III. DISPATCH ACCOMPANYING THE GOVERNMENT OF INDIA ACT, 1833 (3 & 4 WILL. IV, s. 5).

No. 44, dated the 10th December, 1834.

From the Board of Directors, East India Company, to the Government of India.

1. In considering the alterations which have been made by the Act of last session of Parliament in the constitution of the Indian Government, it seems to us of importance that a very full communication should take place between your Government and us, of the views we respectively entertain of the operation of the new enactments, and of the mode in which the powers entrusted to us can best be employed for fulfilling the benevolent intentions of the legislature.

2. You are already apprized of what has been done to constitute in the first instance the several Governments, and of the appointments which, for that purpose, it has been deemed expedient to make.

3. On the commercial changes, the financial results, and the military arrangements which will be required in the new state of the Government, our observations and instructions have been, or will be, transmitted to you, in the appropriate departments. At present our remarks will relate to the great change made in the legislative powers of the Supreme Government; the relation in which the Supreme Government will stand to the subordinate Governments; the effect of the new arrangements on the two great departments of internal administration—Justice and Revenue; the increased facilities granted to Europeans of settling and holding land in the country; the measures prescribed with regard to slavery; the removal of disabilities to office; the provisions regarding ecclesiastical affairs, and the sending home of estimates of vacancies in the civil service. Before we proceed, however, to observe on these several points, we think it expedient to draw your attention to some of the general views and intentions of

the Act with respect to them. By so doing, we shall render more distinct and perspicuous the particular observations into which we shall afterwards enter, and may at the same time afford you some useful suggestions in carrying into effect the provisions of the Act in matters on which, on this occasion at least, we do not think it necessary to give you any specific instructions.

4. The changes which the Act contemplates in the government and political constitution of British India are partly prospective and partly immediate. The state of things at which it aims in prospect is that which is comprehensively described in the preambulary part of the 53rd clause, when a general system of justice and police, and a code of laws common (as far as may be) to the whole people of India, and having its varieties classified and systematized, shall be established throughout the country. The preparation of such a system and such a code must be set about immediately; and it is principally with a view to ensure that object, and for the purpose of collecting and arranging the necessary materials and of advising the Government as to the disposition of them, that the law commissioners are to be appointed. But with whatever celerity those commissioners proceed, their task cannot be completed in a day. The Act indeed asserts, or rather assumes it to be expedient, that the general system in prospect should be 'established in the said territories at *an early period*'; but 'early' is a word of relation. No time should be lost by delay; none should be worse than lost by precipitation. The careful observance of these two conditions will practically determine the length of time required.

5. Thus, however, besides that ultimate state of things to which the Act looks forward, it contemplates an intermediate period: a period of inquiry, of consideration, of preparation, in some degree even of experiment; and it is to this interval that several of its provisions relate. As the labours of the law commissioners are intended to fill up the whole of this interval, one principal care of the Government will be to guide

CH. VIII. the course, and promote the efficiency, of those labours; and this is plainly contemplated by the Act, which, however, does not limit itself to this view of the subject. Without awaiting the result of the inquiries and deliberations of the commissioners, it proceeds at once to change the constitution of the Indian Government, by investing the Governor-General in Council with legislative powers of a new and independent kind, by extending the operation of those powers over the subordinate Governments, and by so modifying the structure of the Supreme Council internally as to adapt it to the discharge of its altered functions.

6. At first sight this change may perhaps appear premature. It may seem that the more natural course would have been to leave the Government for the present nearly as it is, or at least to withhold from it the extensive powers of legislation which it is to exercise under the Act; and when the commissioners shall have so far completed their inquiries and deliberations as to make it practicable to adopt a general scheme of law, judicature, and police, then, and no sooner, to alter the constitution of the Government with an especial reference to that new sphere of action on which it will have to enter.

7. But reflection will, as we believe, show that the legislature has judged wisely, or rather has only obeyed a moral necessity in introducing immediately and without delay the important alterations to which we have referred.

8. Although some time may elapse before the whole people of India, native and foreign, can be placed under one common system, yet it is highly desirable that approximations should previously be made to that result. In this view, it will often be advantageous to act on the suggestions of the commissioners partially and experimentally; thus facilitating as well as accelerating the introduction of the system in question. But in order to act on this plan, it is obviously necessary that the local Government should have the means of legislating freely and with effect; that it should be able to shape its course

according to its own view, both of the results to be ultimately accomplished, and of the circumstances to be intermediately consulted; and at any rate that some of the anomalies which at present belong to the frame of the Government should be from time to time removed.

9. There were, however, other considerations which much more strongly than these dictated such alterations in the Government as should enable it to legislate for a great community. The Act unsealed for the first time the doors of British India to British subjects of European birth. Hitherto the English in India have been there only on sufferance. Now they have acquired a right, however qualified, to live in the country and even to become occupants of land, and there is every prospect of considerable increase of their numbers. It is therefore necessary that the local Government should have full means of dealing with them, not merely in extreme cases, and by a transcendental act of authority, but in the current and ordinary exercise of its functions, and through the medium of laws carefully made and promptly and impartially administered. On no other condition could the experiment of a free ingress of Europeans be safely tried.

10. While new legislative powers are conferred on the Supreme Government, the legislative powers hitherto possessed by the subordinate Governments are to be modified and abridged. On this topic we need hardly refer to the discussions which have of late years taken place both in India and in England on the best mode of constituting the Indian Governments: the decisive consideration with the legislature probably was the necessity of strengthening the Supreme Government in consequence of the free admission of Europeans into the interior of the country.

11. In whatever way the Europeans may disperse themselves throughout India, they will be united together by a powerful sympathy, and will in fact maintain a constant communication. It is therefore both just and natural that they should live under the control of the same laws, nor would it be easy to

CH. VIII. legislate in reference to a part of them without keeping in view the whole body. It is especially to be recollected that the task of legislating in India for Europeans naturalized in the country and not dependent on the Government is altogether new and experimental. The difficulties of this task may have been overrated; but undoubtedly they are not slight or evanescent; and they would be much aggravated if the different Governments were all armed with co-equal and independent legislative powers, and if they were to proceed to exercise such powers at their discretion respectively, and perhaps with very different views and according to inconsistent principles. While therefore it is important, in reference to the admission of Europeans into the interior, that the subordinate Governments, commanding as they do different regions of the Empire, should retain their executive capacities, and even that a new station of executive control and management should be added to them in the north of India, yet there seem good reasons for collecting and uniting all the functions of legislation in one central and metropolitan Government.

12. Having thus explained, according to our conceptions, the general intent and object of those portions of the Act which relate to the constitution of your Government, we shall proceed to give you such directions in connexion with the subject as seem to us more specially requisite. On some points, indeed, the Act expressly enjoins us to give you such directions, on others we are led by our solicitude for the success of the plan, which, at the desire of the legislature, we have undertaken to carry into effect, to suggest some general rules for your guidance, without meaning thereby to fetter the freedom of your deliberations on which the efficient fulfilment of your duty will mainly depend.

13. By the 47th clause of the Act, the home authorities are directed to frame rules for your procedure in the discharge and exercise of all powers, functions and duties thereby vested, or by any other Acts to be vested in you, which rules shall prescribe the mode of promulgating the laws or regulations which

you shall make and of authenticating all your Acts and proceedings.

14. Under this clause, the first point that occurs is, the mode or process by which you are to make and to promulgate laws. Promulgation may take place in many ways, and the means of effecting it are easy of contrivance, but the process by which the law which is to be promulgated shall first be made is matter of nicety, and to be settled with much thought and care. On this head, however, it is not necessary nor expedient to set forth the particular steps or formalities by which you are to proceed. We shall, we think, best comply with the intention of the legislature by stating the principles which you should keep in sight in discharging the important duties in question, and which should be embodied in such rules as you may frame for the purpose.

15. The first principle is that no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion.

16. Trite as this maxim may appear, we are of opinion that it should be distinctly and very carefully acted upon in framing your rules of procedure. In this country the length and publicity of the process by which a law passes from the shape of a project into that of a complete enactment, and the conflict of opinions through which the transit must be made, constitute a security against rash or thoughtless legislation. There may indeed be exceptions, for there are cases in which the pressure of popular feeling forces a law prematurely into existence. To any danger of the latter kind your legislative proceedings will not, for some time at least, be exposed; but where the discussion is confined to the seclusion of a chamber, it is only the determined prudence of those who are concerned that can guard against the hazard of precipitance. We deem it of great moment, therefore, that you should by positive rules provide that every project or proposal of a law shall travel through a defined succession of stages in council before it is

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finally adopted; that at each stage it shall be amply discussed; and that the intervals of discussion shall be such as to allow to each member of council adequate opportunity of reflection and inquiry.

17. It does not escape our recollection that by the Act 33rd George III, c. 52, section 24, a certain course of procedure is prescribed for the councils of Fort William, Fort St. George, and Bombay. So far, however, as respects the proceedings of the Supreme Council, we conceive that the provisions of the new Act supersede, and therefore virtually repeal, the enactment referred to. It is plain that the scanty and meagre directions there given might embarrass, but could not possibly assist in the discharge of the high deliberative functions now confided to you. For that end more minute detailed and comprehensive rules will be necessary.

18. In framing such rules provision must, of course, be made for extreme cases, and in the last resort the ultimate power specifically reserved by the 49th clause of the new Act to the governor-general of acting singly and on his own responsibility will afford refuge from the possible evil of distracted councils and infirm resolutions. But the occasions which compel the use of these extreme remedies rarely occur in well-governed States: and, in general, we are persuaded that in a punctual, constant, and even fastidious adherence to your ordinary rules of practice you will find the best security, not only for the efficiency, but also for the dispatch of your legislative proceedings.

19. While thus considering the deliberative part of your duties, our attention is necessarily led to one important alteration which the Act has made in the constitution of the Supreme Council: we allude to the appointment of the fourth ordinary member of council as described in the 40th clause.

20. In the first and simplest view of this remarkable provision, the presence and assistance of the fourth councillor must be regarded as a substitude for that sanction of the Supreme Court of Judicature which has hitherto been necessary

to the validity of regulations affecting the inhabitants of the presidencies, but which under the new system will no longer be required. It is, however, evident that the view of the legislature extended beyond the mere object of providing such a substitute.

21. The concurrence of the fourth member of council may be wanting to a law, and the law may be good still; even his absence at the time of enactment will not vitiate the law; but Parliament manifestly intended that the whole of his time and attention, and all the resources of knowledge or ability which he may possess, should be employed in promoting the due discharge of the legislative functions of the council. He has indeed no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share, not only in the task of giving shape and connexion to the several laws as they pass, but also in the mighty labour in collecting all that local information, and calling into view all those general considerations which belong to each occasion, and of thus enabling the council to embody the abstract and essential principles of good government in regulations adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway.

22. It will be observed that the fourth member is declared not to be entitled to sit or vote in the council except at meetings for the making of laws and regulations.

23. We do not, however, perceive that you are precluded by anything in the law from availing yourself of his presence without his vote on any occasion on which you may think it desirable. And on many, if not all, of the subjects on which your deliberations may turn, an intimate knowledge of what passes in council will be of essential service to him in the discharge of his legislative functions. Unless he is in habit of constant communication and entire confidence with his colleagues; unless he is familiar with the details of internal administration, with the grounds on which the Government

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24. There is but one further remark we have to offer on this part of the subject. It should, we think, be open to every member of council to propose any law or regulation for adoption, and his proposal should be taken into discussion, even though he should, at the outset, stand alone in his opinion. In deliberative assemblies differently and more numerously constituted, no proposition can be entertained which is not seconded as well as moved. The reasonableness of the rule is obvious; but, in the deliberations of a small and select body, we do not think that the same condition should be enforced.

25. We shall say no more of the necessity of deliberation among yourselves. Another point, not less important, is to provide that, in the work of legislation, you shall, as far as may be practicable, avail yourself of external aid. Persons who are not members of your body may afford you valuable assistance, either by suggesting laws that are required, or by pointing out what is improvable or objectionable in the drafts or projects of laws under consideration.

26. With respect to the suggestion of new laws, the Act (by clause 66) expressly requires you to take into consideration the drafts or projects of laws or regulations which any of the subordinate Governments may propose to you; but on this point we shall afterwards have occasion to observe more particularly. The Act also, we need not say, contemplates constant communications from the law commissioners, which communications are intended to furnish the grounds or the materials for legislation. Useful intimations may also be derived from the public boards, from the judges of the supreme courts, from all persons, whether native or European, invested with a judicial character, or holding official stations of eminence, from all colleges, and other constituted bodies,

perhaps from the native heads of villages, or even private individuals of personal weight and influence. We do not mean that these parties should by law be entitled to call on the legislature to discuss such suggestions, or to come to any decision respecting them. No such right belongs to those who petition the Houses of Parliament in this country. We mean only that their suggestions should be received, and should even be invited.

27. Not less material is the other object to which we have adverted,—that of taking the opinions of the community, or of influential persons, on the projects of law under consideration, —an advantage which in England is secured by the publicity of the discussions in Parliament, and by the time which the passing of an Act requires; but which can be obtained in India only by making special provision for it. On this subject we addressed you in our Political letter of 27th December, 1833, to which we again direct your attention as conveying our sentiments, and of which our present remarks are meant to be confirmatory.

28. We conceive that here, as well as in the former case of the suggestion of new laws, the course of procedure to be followed should be settled by rules of practice generally understood, rather than by a law or regulation formally issued. Progressive experience, and the changing circumstances of the community which you have to govern, composed as it will now be of the Indian and European races commingled together, may make it expedient to vary such course of procedure from time to time, and in some instances perhaps to deviate from any given rules whatever; and for such variances and deviations no imperative law can well provide. All, therefore, that we should require would be that, with such exceptions as you may deem requisite with a view to the progress of current and ordinary legislation, the projects of intended laws shall be so made known to the public as to afford opportunities to the persons or classes whom they may particularly affect to offer their comments or complaints to the legislature, and

CH. VIII. that the rules which you at any time prescribe to yourselves for this purpose shall be submitted to the consideration of the authorities at home.

29. From the principles to be observed in making laws, we naturally proceed to the mode of promulgating them, with which we may not improperly join the mode of authenticating the acts and proceedings of Government; for, on both these heads, the 47th clause of the Act requires us to give you instructions; to both of them, however, we have called your attention in the Political letter, already referred to, of December, 1833. Our present remarks, therefore, shall be confined to a very few particulars.

30. With respect to promulgation of laws, our chief direction to you would be to persevere in the practice which you at present pursue, as being on the whole both proper and efficient; but we must point your observation to one object for which it does not sufficiently provide. The laws are now printed in English, in the language of the courts, and in whatever is the prevalent language of the country, and copies of them are furnished to the several functionaries of Government. It would, however, be desirable that they were more generally made known to the people. It will deserve your consideration what measures can be taken for that end. One thing at any rate can be done: cheap copies in the language of the country ought to be everywhere ready for sale to all who have the desire to possess them.

31. The difficulties which have from time to time been raised by the courts of English law about the authentication of your Acts, applying the distinctions of that law to circumstances to which they were not adapted, probably suggested to the legislature the propriety of rules of authentication. All that is necessary now, when you have the power of making laws for the supreme courts, is to declare by enactment what shall be deemed and taken to be authentication; and, in doing so, all that is necessary for you to consider is the marks by which a document evidentiary of an act of Govern-

ment can be proved to be what it purports to be, that is, can be distinguished from a counterfeit.

32. Having now taken a general view of the practice to be adopted, and the principles to be acted upon in the execution of your legislative office, we think it necessary to recur to one of the matters which were included in that view, but which has also an independent claim to our best consideration.

33. Heretofore you have been invested with extensive powers of superintendence over the legislation of the subordinate presidencies. But as those presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests on you; and every law which has an especial reference to the local interests of any of those presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be preconsidered by you with as deep and as anxious attention as if it affected only the welfare of the presidency in which you reside. You may, indeed, as we have already observed, receive from the subordinate presidencies suggestions or drafts of laws, and these it may frequently be expedient to invite. But in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the offspring of your own minds, after obtaining an adequate knowledge of the case. We say this, knowing as we do how easily the power of delegating a duty degenerates into the habit of neglecting it, and dreading lest at some future period, under the form of offering projects of laws, the subordinate presidencies should be left to legislate for themselves, with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their own hands.

34. There are two sets of occasions, on one of which the

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35. When provision is to be made for local peculiarities, the information of local observers is of peculiar importance; and when the law, wholly or mainly, relates to such peculiarities, the first draft of it will often be most advantageously prepared by those who are best acquainted with them.

36. The greater number of laws, however, are not of this description. They relate to general matters in which local peculiarities have subordinate concern; and in which, therefore, such peculiarities need not otherwise be consulted than by prescribing some modification of the general provisions of the law in applying them to particular cases. Of such laws, although the subordinate Governments will always have the power of suggesting and recommending them, and should even be encouraged to do so, yet the original concoction should usually be your own, the modifications being referred to the local Government, and its observations receiving your mature consideration.

37. In contemplating the extent of legislative power thus conferred immediately on our Supreme Government, and in the second instance on ourselves; in considering that on the use of this power the difference between the worst and the best of Governments mainly depends; in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable; in adverting to the countless variety of interests to be studied and of difficulties to be overcome in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we with you are conjointly laid. Whatever means or efforts can be employed on the occasion; whatever can be effected by free and active discussion, or by profound and conscientious deliberation; whatever aids can be derived from extrinsic counsel or intelligence, all at the utmost will be barely commensurate with the magnitude of the sphere to be occupied, and of the

service to be performed. We feel confident that to this undertaking your best thoughts and care will be immediately and perseveringly applied, and we invite the full, the constant, and the early communication of your sentiments in relation to it. On our part we can venture to affirm that no endeavour shall be wanting in promoting your views and perfecting your plans. Others also who are in a situation, by advice or exertion, to assist in the work will contribute to it, we hope, to the extent of their power; and we trust that, by the blessing of Divine Providence on our united labours, the just and beneficent intentions of this country in delegating to our hands the legislative as well as the executive administration of the mightiest, the most important, and the most interesting of its transmarine possessions, will be happily accomplished.

38. What laws you shall first pass, or to what matters your earliest measures of legislation shall be directed, we are not required by the Act to suggest. There is, however, one subject or class of subjects in respect of which, both because you will be obliged to legislate on it instantly, and also in consideration of its great importance and delicacy, we deem it incumbent on us to state to you our views and wishes.

39. For this subject we particularly refer you to the 43rd, 46th, 81st, 82nd, 83rd, 84th, 85th, and 86th clauses of the Act.

40. These clauses bring into view the legislative duties which will be imposed on you by the free admission now to be afforded to British subjects into the interior of India, among the first of which duties will be the obligation of providing, as directed by the 85th clause, for the protection of the natives from insult and outrage in their persons, properties, religions and opinions.

41. The importance, and indeed the absolute necessity, of extending to the natives such protection we need not demonstrate. Though English capitalists settling in the country, if they are governed by an enlightened sense of

CH. VIII. their own interests, will see the importance of acquiring the confidence of their native neighbours by a just and conciliatory course of conduct, even some of this class may yield to the influence of worse motives. Eagerness of some temporary advantage, the consciousness of power, the pride of a fancied superiority of race, the absence of any adequate check from public opinion, the absence also in many cases of the habitual check supplied by the stated and public recurrence of religious observances,—these and other causes may occasionally lead even the settled resident to be less guarded in his treatment of the people than would accord with a just view of his situation. Much more may acts of outrage or insolence be expected from casual adventurers, cut off possibly from Europe by the consequences of previous misconduct, at all events released from the restraints which in this country the overawing influence of society imposes on all men not totally abandoned; the greater necessity is there that such persons should be placed under other checks.

42. If the administration of justice in the mufassal were completely adequate to ensure to the injured native the means of due and prompt redress, you would be put to little difficulty. It would only be necessary to render British subjects fully amenable to the jurisdiction of the native tribunals, and all would be well. But some time must elapse before your judicial system in the interior will be thus effectual; and while, on the one hand, it will be necessary that you expedite by all possible means the desired improvement of that system, it will, on the other, be incumbent on you to provide for its deficiencies in the *interim* both by framing laws adapted to the particular object in view, and by directing the vigilant attention of Government to cases of abuse with which the ordinary administration of justice may be unable to cope. Our instructions on this head are necessarily general, suggesting principles rather than prescribing rules; to your discretion we must commit the task of carrying them into detailed execution.

43. Whatever provision may be made against occasional abuse, the views of Parliament in opening the interior of India to Europeans are to be carefully kept in recollection. The clauses which effect this great alteration in our Indian policy are not *restraining* but *enabling* enactments. The legislature has avowedly proceeded on the principle that, generally speaking and on the whole, the increased entrance of Europeans into the interior of India, their increased power of blending their interests with those of the country, and their increased opportunity of freely associating with the natives, will prove beneficial to the native people, and promotive of their general improvement and prosperity. That which the legislature has thus assumed is also to be assumed by us and by you. Your laws and regulations therefore, and also all your executive proceedings in relation to the admission and settlement of Europeans, like that law of the Imperial Legislature out of which they grow, must, generally speaking and on the whole, be framed on a principle, not of restriction, but of encouragement. The conditions which you shall see fit to impose on private persons coming from Europe for the highly proper purpose of placing and keeping them within the supervision of an all-seeing police must not be more than necessary for that object. The regulations which you shall make with the just and humane design of protecting the natives from ill-treatment must not be such as to harass the European with any unnecessary restraints, or to give him uneasiness by the display of improper distrust and suspicion. Laws framed in such a spirit tend to produce the very mischiefs which they aim at preventing. To the evil-minded they suggest evil, they furnish the discontended with materials or pretexts for clamour, and they irritate the peaceably-disposed into hostility.

44. On a like principle, if any act of insult or outrage should occur which loudly calls for redress, and for which the law affords no remedy, the arm of power must interfere; but here, also, caution is to be used. The necessity for

CH. VIII. interposition must be clear, and its limits must not be exceeded. Flagrant wrong is not to be permitted; but neither is it to be repressed by too officious or too violent an effort on the part of the Government. Care, above all things, should be taken not to make casual misconduct the occasion of harsh legislation. To put down abuse even by a strong act of authority were better than to give it importance and in some sense perpetuity by founding on it, when it takes place, a severe and undiscriminating law.

45. Similar observations seem to us to apply to the opportunities to be afforded to British Europeans of holding land in the interior. By the 86th clause of the Act, such natural-born subjects of His Majesty as are authorized to reside in the country are also authorized to hold lands or any interest in lands for any term of years in the places in which they are so authorized to reside. Thus far the right is absolute, but there can be no question that the Government is authorized to determine to a certain extent the mode in which that right shall be exercised, both in virtue of the paramount power which belongs to all Governments of regulating the conditions attached to the enjoyment of property, and under the special clause, already mentioned, which makes it the duty of the Governor-General in Council to provide by law for the protection of the natives from the injuries to which the entrance of Europeans may render them liable. The tenures of land in India are so dissimilar to those of Europe that a European purchaser, unless furnished with peculiar means of information, is ever in danger of misapprehending the precise nature of the interest which he has acquired. In Bengal, for example, he naturally applies to the relative possessions of the zemindar or other superior and the raiyat the idea rooted in an European mind of the relation between landlord and tenant, and if he should purchase the interest of the zemindar, he will be apt to conclude that he has acquired that of the raiyat also, and that he may at once proceed to a course of ejectment. If too well instructed to

be thus mistaken, yet he is little likely to form an accurate conception of the rights of the cultivator or of his own, and may by ignorance alone be led to commit acts of injustice. Against these evils some provisions should be made.

46. Under the operation of the Act it will, we conceive, be one amidst the many duties of the law commissioners to review the modes and forms of Indian conveyancing and to consider of what improvement they may be susceptible, with a view to give facility to the transfer and stability to the possession of real property. Probably, however, it will be necessary for you, immediately and before the commissioners can proceed far in their inquiries, to publish regulations on this subject prescribing proper modes of conveyance in sufficient variety to meet the several cases which seem likely to occur, together with formulae adapted to each case. We would also suggest the establishment of offices for the registration of all transfers of land or any interest in them; such registration to be compulsory under such penalties as may appear to you requisite. We further think that, independently of any laws and regulations, you should take means of supplying such Europeans as may be disposed to acquire lands in the interior with authentic information popularly conveyed respecting the general nature of the Indian tenures as they now subsist, and especially in reference to the interests of the raiyats or other cultivators.

47. In acting on these instructions, we earnestly desire you to keep primarily in view the interests and the welfare of the natives; but next to this principal object, and at no great interval below it, we would enjoin you to direct your efforts to the promotion of those liberal purposes that dictated to Parliament the enactment which you are called to carry into effect. The Act assumes that the British capitalist, seeking to establish himself in the country, comes as a friend, not as an enemy, and the policy of the Act would be defeated if the designs of such persons were to meet with any unnecessary hindrance or embarrassment.

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48. We are aware that the restraints which your regulations of the 7th May, 1824, and 17th February, 1828, laid on the acquirement and ownership of land by Europeans were partly intended for the protection of the European buyers, rather than for that of the natives who might be affected by the sale. We have remarked above on the ignorance of Europeans respecting the nature and incidence of landed property in India, and there can be no doubt that they might be led by that ignorance into improvident speculations; but we suspect that in this, as in many other cases, men must in a good measure be left to gather wisdom from experience. We are not convinced that Europeans seeking an interest in Indian land either need or have a right to demand any further or other protection than the law grants to natives under the same circumstances. We are here speaking, it will be observed, of legal protection, not of the protection which Government may indirectly afford to the persons in question by taking measures to supply them with a better knowledge of the subject-matter of their speculations. In effect it is generally admitted that the regulations, alluded to, of 1824 and 1828 impeded and discouraged those investments in land which they, on the contrary, intended to aid and facilitate.

49. Before we take leave of the 86th clause of the Act, we must advert to the proviso that nothing contained in the Act shall prevent you from enabling, by law or otherwise, any of the king's subjects to acquire or hold lands, or any interest in them, in any part of the Indian territories, and for any estates or terms whatever.

50. This proviso, it will be observed, is permissive, not imperative. It simply leaves to the Supreme Government, as the local organ of the Company, the liberty of putting in force whatever right the Company independently of the Act possesses of enabling British subjects to hold lands anywhere in the country and for any estates, whether of inheritance or otherwise. That such right belongs to the Company, and may, under their control, be exercised by you, will not (we

think) admit of a doubt; but unless some very strong and urgent reasons for the exercise of it in a particular case can be shown, we shall not wish it to be exercised, until the matter shall have been referred to the consideration of the home authorities, and, at all events, we must desire that no general scheme or plan of the sort be adopted without such previous reference and consideration.

51. From the subject of the residence and settlement of Europeans in India we now proceed to another topic closely connected with this, and suggested by the same clauses of the Act.

52. When the period shall have arrived for placing the entire people of India, whether of Eastern or Western extraction, under one and the same system of law, police and judicature, it is plain that the supreme courts must either be superseded or must be melted into the general mass of judicial establishments for the whole country. This state of things, however, is as yet only in prospect and reversion; and a question arises by what laws and tribunals British Europeans in India are to be governed in the *interim*, and how far the powers and functions of the supreme courts are to remain unimpaired.

53. Though the period just referred to may be distant, it would certainly be very desirable, as we have intimated in an earlier page, that your intermediate operations as a legislature should, to some extent, prepare the community for its arrival.

54. You must not indeed too confidently anticipate what shall be the system then to be established, since, under the influence of such anticipation, you may be led to introduce alterations which will only have the effect of embarrassing the adoption of what ultimately may be deemed best. The alterations you introduce must be in accordance with the conclusion established by the inquiries and discussions of the law commissioners, and should follow the progress of those inquiries slowly and cautiously. We need not add that such

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alterations must be clear improvements as compared with the present state of things, and must carry with them their own recommendation independently of all intended and prospective accompaniments. Subject, however, to these conditions, it seems to us that you may very properly employ your legislative functions, so far as your powers and means permit, in paving the way for the wished-for and expected consummation.

55. The anomalies connected with the constitution and jurisdiction of the supreme courts are well known, and the courts themselves are the greatest anomalies of all.

56. A judicature utterly uncontrollable by the Government, and on the contrary controlling the Government, recognizing the highest authorities of the State only as private individuals, and the tribunals which administer justice in all its forms to the great body of the people only as foreign tribunals, is surely an anomaly in the strictest sense of the word. But theoretical objections would be of little consequence in the case if there were none of a practical kind. The evils which actually attend or arise out of the jurisdiction of the supreme courts are represented with great force and fullness in the papers which form the Appendix No. V to the Report of the Committee of the House of Commons on East India Affairs in 1831, most of which papers emanated from yourselves conjointly or individually and from the judges of the Supreme Court of Calcutta. We do not think it necessary here to enter into the details of a subject with every part of which you are intimately conversant, but we must observe that the remedy recommended and prescribed by all parties is that the jurisdiction of the courts in question should be both modified and defined, and that, in speaking of modification, all of them seem more or less to contemplate some abridgement of the powers and authorities of those courts, and more specially of those powers and authorities which they exercise beyond the limits of Calcutta, Madras, and Bombay, respectively.

57. The means which the present Act affords you of

applying the remedy referred to are set forth in the 43rd, 45th, and 46th clauses. By the first of these, the laws and regulations which you make under the Act are to bind all courts of justice, whether chartered by the king or not, and their jurisdictions, and also all places and things throughout the territories of British India. By the 45th clause your laws and regulations are to be taken notice of by all courts of justice within those territories, and they need not be registered in any court. By the 46th clause you are restrained from making, without our previous sanction, any law or regulation which shall empower any courts, other than those chartered by the king, to sentence British subjects or their children to death, or which shall abolish the courts so chartered. In respect to the last-mentioned clause, we certainly should not, without much consideration, give our sanction to the important changes there referred to; and for the present those changes may be regarded as out of view. But after allowing for the reservations in this clause, the powers and authorities with which the Act invests you in relation to the supreme courts are most extensive and important. Your laws and regulations no longer require to be authenticated by registration in the supreme courts, and they, notwithstanding, bind those courts, and must be noticed by them without being specially pleaded or proved. This is the known privilege of sovereign legislation. Beyond this you are expressly authorized to make laws for the 'jurisdiction' of the supreme courts—a most material qualification, as we conceive, of the inability to abolish them, since in virtue of this authority you may reduce the extent or circumscribe the sphere of their judicial power in any degree consistent with their retaining their essential character.

58. With regard to British-born subjects, when the Act says that you shall not pass laws making them capitally punishable otherwise than by the king's court, it does, by irresistible implication, authorize you to subject them in all other criminal respects and in all civil respects whatever to

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the ordinary tribunals of the country. We know not, indeed, that there is any crime for which within this clause they may not be made amenable to the country tribunals, provided that the law in giving those tribunals jurisdiction over the crime shall empower them to award to it some other punishment than death.

59. From these premises there are some practical inferences to which we must call your attention. First, we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the natives. It is, of course, implied in this proposition that, in the interior, they shall be subjected to the mufassal courts. So long as Europeans penetrating into the interior held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a foreign power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are become inhabitants of India, they must share in the judicial liabilities as well as in the civil rights pertaining to that capacity, and we conceive that their participation in both should commence at the same moment.

60. It is not merely on principle that we arrive at this conclusion. The 85th clause of the Act, to which we have before referred, after reciting that the removal of restrictions on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the natives from insult and outrage—an obligation which, in our view, you cannot possibly fulfil unless you render both natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.

61. In laying down this proposition, however, we must guard against misconception. Though an Englishman be

made amenable to the same tribunal with the native, and though his rights be placed under the same supervision and protection, it does not follow that those rights are to be determined by the same rule. It is not necessary, for example, that the property of an Englishman should descend by the Indian rather than the English law of succession. In cases of marriage, the same tribunal may observe one rule in respect to the Englishman, another in respect to the Mussulman, and a third in respect to the Hindu. Even in criminal cases where such distinctions are least desirable, they may yet sometimes be necessary, since it is conceivable that what would operate as a severe penalty to a Hindu would be felt as none by an Englishman; but variances like these do not affect the main principle. The maxim still remains that justice is to be distributed to men of every race, creed, and colour, according to its essence, and with as little diversity of circumstances as possible.

62. Secondly, in looking forward to the effect of making Englishmen triable by the mufassal courts, you will do well to take into your renewed and very serious consideration a question often mooted, and even partially discussed, though as yet undecided: we mean whether or not the use of juries in criminal trials should be introduced into the provinces. We would not blindly yield to the opinion or the prejudice that it is the inalienable right of an Englishman under a criminal accusation to be tried by a jury. The only inalienable right of an accused Englishman is justice; and if he resides in the interior of India, he must be content with such justice as is dispensed to the natives. But the prospect of an increased residence of Englishmen in the interior, considering their known attachment to the principle of this institution, forms an additional reason for the consideration of the expediency, or inexpediency, of adopting it generally.

63. Even, however, if it be so adopted, it is neither necessary nor expedient that the jury trial which may be established in India should be an exact copy of that which

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64. Thirdly, it appears to us that, in conferring upon you the power of legislating for the jurisdiction of the supreme courts and for 'all places and things,' the legislature plainly denotes that you should proceed to define and to regulate by law the jurisdiction and the powers of the supreme courts, with a view to correct the evils which have flowed from the exercise of such jurisdiction and powers as hitherto constituted. Whether in pursuing this object you will go to the length of a suggestion which has been thrown out by Mr. W. H. Macnaghten in a note contained in the Appendix V[1] before mentioned, and which has also been recommended to us from other quarters of authority, namely, that the supreme courts should be deprived of all jurisdiction whatever over the natives, both in and out of the presidencies (meaning by 'presidencies' the towns of Calcutta, Madras, and Bombay), the consequent void in the presidencies being supplied by the creation of other tribunals; or whether, leaving the present power of such courts in other respects unimpaired, you will absolutely confine their jurisdiction to the presidencies; or to what other plan you will have recourse;—these are questions on which we think it premature now to enter. But we must

[1] Note of April 9, 1829, Appendix V, No. 11.

desire that, before changes like these or any others of equal, or nearly equal, magnitude are introduced, they may be submitted to us for consideration. On minor alterations we do not mean to preclude you from venturing, but we must observe that even these should not be definitely fixed until you have fully conferred on them with the judges of the supreme courts, on whose good sense, public spirit, and liberality we are sure that we may confidently rely for affording you effectual aid in all reforms tending to the more satisfactory administration of justice.

65. Leaving this subject, we must pass to another which also is to engage a portion of your earliest care and attention.

66. The objects to which the labours of the law commissioners are to be directed are set forth in the 53rd clause of the Act with great clearness, fullness, and precision, and by the 54th clause it is enacted that they shall follow such instructions with regard to the researches and inquiries to be made, and the places to be visited by them, and with regard to all their transactions as they shall from time to time receive from the Governor-General in Council. In pursuance of this enactment it will plainly be proper that immediately, and before the commissioners commence their labours, you should furnish them with instructions on the points referred to. In fact such instructions will be more necessary for them at the outset of their course than in its subsequent stages, and at the same time the task of framing them will be more difficult and delicate in the first instance than afterwards. Having once begun well, the work of the commission will proceed easily, experience suggesting such alterations of procedure as may be expedient.

67. The 54th clause further directs that the commissioners shall make special reports to you on such matters as by their instructions from you shall from time to time be required, which reports you are to take into consideration, and, together with your opinions and resolutions on them, to transmit to us in order that both the reports and such opinions and

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resolutions may be laid before both Houses of Parliament. Here, as before, we draw the inference that your very first instructions to the commissioners should contain directions as to the measures on which they are to make reports.

68. We have, however, called your attention to these clauses chiefly for the purpose of impressing on you the importance of the part which the legislature expects you to act in promoting the successful prosecution of this commission. Much unquestionably will depend on the wisdom and energy with which the commissioners themselves shall pursue the great objects for which they are appointed; but it will be no less incumbent on you, by a careful study of those objects, and of the best means of attaining them, to enable yourselves to impel in the way both of stimulus and direction the progress of their labours.

69. Throughout these remarks we have been at pains to keep in your view our intention that they should be considered by you as suggestions merely to aid, not to fetter the exercise of your own judgement. The same caution should be exercised in some degree by yourselves in framing your instructions to the commissioners. These, however full and minute, ought not, in matters of detail, to be altogether decisive or peremptory. If the individuals selected for this office shall, as we hope and believe, be qualified to discharge its duties, they may safely and usefully be allowed, within reasonable limits, to consult their own discretion—more especially as their operations will ever be conducted under your eye, and will, at any moment, be open to your interference.

70. In respect to the Law Commission, we have yet one observation to make, which, though it may seem superfluous, is yet of too much importance to be omitted. It must be distinctly understood, and insisted on, that the members of the Law Commission shall be exclusively devoted to the duties of it, and shall not engage in any other pursuit or occupation of emolument or pecuniary advantage. As to those members who are civil servants of the Company, there may be little

danger of such an event. But with regard to such members of the commission as may be of the legal profession, we think this precaution far from unnecessary. Being, as we trust they always will be, persons of eminent talents and reputation, men will naturally resort to them for advice. That they should ever practise as barristers is of course out of the question, but there will, we think, be strong inducements to make them act as chamber counsel, or arbitrators, unless it be at once declared that any pursuit or employment tending to pecuniary advantage shall be held incompatible with the situation of a member of the commission.

71. Among the objects to which your legislative deliberations are earliest to be directed, there is one to which we have not as yet adverted—that of the mitigation of the state of slavery, with a view to its extinction at the first safe moment. The 88th clause of the Act contains the provisions on this head.

72. This subject in India is one of great delicacy, and requiring to be treated with the utmost discretion. There are certain kinds of restraint required, according to native ideas, for the government of families, and forming, according both to law and custom, part of the rights of the heads of families, Mussulman and Hindu, which are not to be included under the title of slavery. In legislating, therefore, on slavery, though it may not be easy to define the term precisely, it is necessary that the state to which your measures are meant to apply should be described with due care. We think also that your remedial measures should generally begin with the cases of the greatest hardship.

73. Of the two kinds of slavery, predial and domestic, there is not a great deal of the former. It exists mostly on the Malabar coast and the new territories on our north-east frontier, and there, it would appear, the cases of greatest hardship are found, though the vague information we possess on the subject leaves the state of the evil in no small uncertainty. Domestic slavery in India is generally mild. The

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origin of a great part of it is in seasons of scarcity, when a parent, who is unable to maintain his child, sells him to some person of ample means. He is then reared as a part of the family into which he is received, and feels himself on a level, but little below, and sometimes even above, that of an ordinary servant. To dissolve such a connexion by forcible means would in general be to inflict an injury on the emancipated individual. The means of escape, where the colour, features, and shape of the slave are not distinguished from those of the other classes, and in a country of vast extent, facilitating distant removal, are so easy that the treatment of a slave cannot be worse than that of an ordinary servant, without giving him an adequate motive to abscond, and the market-value is so small that it is seldom worth while to be at the trouble of sending after him.

74. We think that the law should be made as severe against injuries done to a slave as if they were done to any other person, and his access to the judge for the purpose of preferring a complaint should be facilitated to the utmost.

75. With respect to cases for emancipation, it appears to us evident that the desire for it on the part of the slave himself should always be previously ascertained. The declaration of the desire should be made to the judge, and access to him for that purpose ought to be equally facilitated. The next question will be—what means should be adopted for his emancipation? Compensation will be due to the owner; but that will seldom be a heavy charge. The business, however, in all its parts should be regulated by precise rules, into the details of which we shall not enter. And every case of emancipation should be a judicial proceeding, investigated and decided by a judge.

76. We have now completed all that we deem it necessary to say at present regarding the legislation to be exercised and the laws to be made in India. We will proceed to consider the new relation in which you will be placed with

reference to the subordinate Governments, not by means of your legislative supremacy, but in other respects.

77. The words of the 39th clause are very comprehensive: 'The superintendence, direction, and control of the whole civil and military government of all the said territories and revenues in India shall be vested in the said Governor-General in Council.'

78. The powers here conveyed, when the words are interpreted in all their latitude, include the whole powers of government. And it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole civil and military government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you.

79. With respect to the exercise of your legislative powers in the several presidencies, what we have adduced of a general nature on that subject will, for the present, suffice.

80. With respect to the other powers which you are called upon to exercise, it will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government and those which belong to the general Government ruling over and superintending the whole.

81. When this line is improperly drawn, the consequence is either that the general Government interferes with the province of the local Government, and enters into details which it cannot manage, and which preclude its consideration of more important objects; or that it withdraws its attention from the evidence of many things which may be right or wrong in the general course of the local administration, and thus partially deprives the State of the benefit of its superintendence and control.

82. It is true that the former Acts of Parliament which made the local Government of Bengal a supreme Government

CH. VIII. gave the Governor-General in Council a control and superintendence over the other presidencies as complete and paramount as it was possible for language to convey, and this we must assume to have been the intention of the legislature. In practice, however, the Supreme Government made little exercise of its superintending authority, and the result has been that even that little exercise of it has been generally made when it was too late to be made with real effect, namely, after the subordinate Government had taken its course; thus losing the character of control and responsibility, and retaining only that of *ex post facto* intervention—a sort of intervention always invidious, and in most cases nothing but invidious, because what was already done, however open to censure, was beyond the reach of recall or correction.

83. It is evidently the object of the present Act to carry into effect that intention of the legislature to which we have alluded. Invested as you are with all the powers of government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it.

84. In general it is to be recollected that in all cases where there are gradations of authority the right working of the system must very much depend on the wisdom and moderation of the supreme authority and also of the subordinate authorities. This is especially true of a system so

peculiar as that of our Indian Empire. It was impossible for the legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and a petty, vexatious, meddling interference. We rely on the practical good sense of our Governor-General in Council, and of our other governors, for carrying the law into effect in a manner consonant with its spirit, and we see no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without impairing or neutralizing that of the highest.

85. The subordinate Governments will correspond directly with us as formerly; but we think that you should immediately receive copies of all their more important letters to us, both as part of the evidence of their proceedings which you should have before you, and that we may have the benefit of the observations which you may have to make, and which we desire that you will always dispatch to us with the smallest possible delay.

86. It will be for you to determine what part of their records, or what other documents, it will be necessary for you regularly to receive as evidence of the general proceedings of the subordinate Governments, and as an index to the other documents which you will have occasion to call for when anything occurs which you desire to investigate.

87. The division of the Bengal Presidency into two presidencies will require some temporary proceedings of a particular nature. When the Government of Agra is once established, and the arrangements for conducting its administration are completed, it will proceed in the same train as the other Governments, but in the meantime these arrangements will require much of your care.

88. We have already informed you in paragraph 8 of our letter in the Political Department of December 27, 1833, of our opinion in regard to the mode in which the division of the territories hitherto included in the Bengal Presidency should be carried into effect, at least in the first instance.

89. We trust we need not impress upon you the importance of economy and of placing the establishments in the new presidency on a moderate scale. The plan of the judicial establishment, including both the primary and the appellate courts, will be ultimately determined by that general revision of all that pertains to the administration of justice, for which the aid of the Indian law commissioners has been afforded you. In the meantime the judicial establishment should remain on the present footing with as little alteration as possible. In the provision made for the business of primary judicature, the forming of the territory into a separate presidency creates no change. But you will have to consider what, as a temporary arrangement, will be best for the appellate jurisdiction, whether a Sudder Adawlut or some other species of tribunal.

90. With respect to the revenue establishment, the communications which we have recently received from you indicate so much dissatisfaction with the mode in which the duties of that department have hitherto been executed in the territory proposed to be formed into the Agra Presidency, that we think you should take the opportunity of placing that establishment at once on the footing which you consider best adapted to the exigencies of the case. The plan of collectors, with their native subordinates in the districts, we suppose, you will deem it proper to retain. What will most require your consideration is the plan for superintendence. You have had experience both of Boards of Revenue and of superintending commissioners. Neither Boards of Revenue nor superintending commissioners have fully answered your expectation. So much, however, depends upon superintendence, in this department particularly, that one of your most emphatical instructions to the new Government should be to study the means of rendering it good; and one of the most urgent of your own duties will be to contribute your utmost endeavours to promote the same end.

91. You will observe that our remarks are at present

confined to the formation of an agency the best fitted for performance of those which you class under the head of Revenue duties. The rules by which collectors are to be guided in making assessments and collections is another subject on which our sentiments have recently been pretty fully made known to you, and on which we shall hereafter have occasion from time to time to make additional remarks.

92. In paragraph 16 of our letter to you in the Political Department of December 27, 1833, we have desired you to devise a plan, according to which the selection of individuals may be made to fill the offices under the Governments respectively of Bengal and Agra. It is therefore not necessary for us to advert to that subject further in this place.

93. We have also in paragraph 12 of the same letter informed you that we have not thought it necessary or desirable to appoint a separate council to assist the governor-general in the local administration of the presidency of Fort William. Under this arrangement the governor-general has functions of two sorts to perform in regard to Bengal: to co-operate with his council in controlling the Bengal Government, and to carry on that government alone, if without a council, or as president of the council, if he has one.

94. It is very evident how important a duty you will have to perform in maturing a scheme by which the separate duties of the governor-general may be performed with least detriment to one another. The time which he bestows upon the one must necessarily be withdrawn from the other; and it will be incumbent upon you with the utmost diligence to consider in what way this division of the time and attention of the governor-general, and the limited portion of both which he can devote to either class of his duties, can be prevented from producing evil consequences.

95. There is also something peculiar in the position in which you will stand with respect to the superintendence and control of the Bengal Government. It is in this case your own president whom you will have to control, and

a state of things may perhaps occur which may in some cases occasion embarrassment. In order to obviate possible evil, you will (we think) do well to meet the exigency before it shall arise. Much difficulty would thus be removed, because by adherence to pre-established rules all invidiousness would be taken away.

96. Nothing is fixed by the legislature with regard to the seat of Government in the Agra Presidency. The city of Agra is pointed out by the name adopted, and by the obvious advantage of elevating to this distinction a capital of great antiquity and celebrity, but the consideration of preponderant convenience is not therefore excluded. The points of chief importance are—the salubrity of the place, its locality with respect to the territories which the presidency is to comprise, and the expense which will be required in buildings and roads. Comparative advantage in these respects should determine the choice.

97. The legislature has left the seat of the Supreme Government, both permanent and temporary, to its own choice. The important circumstance, however, of making the governor-general local Governor of Bengal renders it necessary that his habitual residence should be in the place where he can best perform both sets of his duties; that is, in Bengal. We have no doubt, therefore, that you will concur with us in thinking the seat of the Supreme Government should be at Calcutta, where your records are now deposited, and where the requisite buildings, public and private, already exist.

98. It is true the governor-general may appoint a deputy as Governor of Bengal. But this arrangement would need to be permanent, if the seat of the Supreme Government were not in Bengal, and in that there would be considerable difficulty. The governor can appoint as his deputy only one of the ordinary members of the Supreme Council. But if one of the four ordinary members of the Supreme Council is taken away, three only remain. By express enactment

also it is established that three ordinary members shall be present to constitute a legislative council. But the inconvenience of being unable to transact business without the presence of every member of the council must be obvious, especially in India, where the health of Europeans is so precarious.

99. We have already called upon you to prepare for our consideration a regulation relative to the distribution of patronage under the provision of the 78th section of the Act in paragraph 16 of our letter to you in the Political Department of December 27, 1833.

100. There is one function of government with respect to which it may be a question in what hands it should be lodged: we mean the regulation and management of the external relations. With respect to the great questions of peace and war, there is no room for deliberation. It is very obvious they should be determined wholly by the superintending Government, which alone has under its eye the whole of the relations of the State. We think, indeed, that the diplomatic interests of the State will be placed with most advantage entirely in the hands of the Supreme Government, and the patronage connected with that department will of course follow the duties. It does not follow, nor do we mean, that if, from proximity, or any other cause, a particular residency, or particular negotiation, can be better superintended by a local than the general Government, the general Government should not delegate that superintendence.

101. We have thus touched upon the more comprehensive of your legislative and superintending duties, and have directed your attention to the subjects which we think most immediately call for consideration and arrangement, as briefly as was compatible with the hope of making our suggestions intelligible, and showing on what subjects we desire the benefit of your reflections in return.

102. It is now necessary to advert to certain other subjects

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which, though not strictly of a legislative or superintending character, are yet of the greatest moment.

103. By clause 87 of the Act it is provided that no person, by reason of his birth, creed, or colour, shall be disqualified from holding any office in our service:

104. It is fitting that this important enactment should be understood in order that its full spirit and intention may be transfused through our whole system of administration.

105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break down or derange the scheme of our government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the legislature has established for securing the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the college at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be of the number; that no subject of the king, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the covenanted service itself, provided he be otherwise eligible consistently with the rules and agreeably to the conditions observed and exacted in the one case and in the other.

106. In the application of this principle, that which will chiefly fall to your share will be the employment of natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class—we mean natives of the whole blood—it is hardly necessary to say that the purposes of the legislature have in a considerable degree been anticipated; you well know, and indeed have in some important respects carried into effect, our desire that natives should be admitted

to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy; still a line of demarcation, to some extent in favour of the natives, to some extent in exclusion of them, has been maintained; certain offices are appropriated to them, from certain others they are debarred—not because these latter belong to the covenanted service, and the former do not belong to it, but professedly on the ground that the average amount of native qualifications can be presumed only to rise to a certain limit. It is this line of demarcation which the present enactment obliterates, or rather for which it substitutes another, wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.

107. To this altered rule it will be necessary that you should, both in your acts and your language, conform; practically, perhaps, no very marked difference of results will be occasioned. The distinction between situations allotted to the covenanted service and all other situations of an official or public nature will remain generally as at present.

108. Into a more particular consideration of the effects that may result from the great principle which the legislature has now for the first time recognized and established we do not enter, because we would avoid disquisition of a speculative nature. But there is one practical lesson which, often as we have on former occasions inculcated it on you, the present subject suggests to us once more to enforce. While, on the one hand, it may be anticipated that the range of public situations accessible to the natives and mixed races will gradually be enlarged, it is, on the other hand, to be recollected that, as settlers from Europe find their way into the country, this class of persons will probably furnish candidates for those very situations to which the natives and mixed race will have admittance. Men of European enterprise and

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education will appear in the field; and it is by the prospect of this event that we are led particularly to impress the lesson already alluded to on your attention. In every view it is important that the indigenous people of India, or those among them who by their habits, character, or position may be induced to aspire to office, should, as far as possible, be qualified to meet their European competitors.

Thence, then, arises a powerful argument for the promotion of every design tending to the improvement of the natives, whether by conferring on them the advantages of education, or by diffusing among them the treasures of science, knowledge, and moral culture. For these desirable results, we are well aware that you, like ourselves, are anxious, and we doubt not that, in order to impel you to increased exertion for the promotion of them, you will need no stimulant beyond a simple reference to the considerations we have here suggested.

109. While, however, we entertain these wishes and opinion, we must guard against the supposition that it is chiefly by holding out means and opportunities of official distinction that we expect our Government to benefit the millions subjected to their authority. We have repeatedly expressed to you a very different sentiment. Facilities of official advancement can little affect the bulk of the people under any Government, and perhaps least under a good Government. It is not by holding out incentives to official ambition, but by repressing crime, by securing and guarding property, by creating confidence, by ensuring to industry the fruit of its labour, by protecting men in the undisturbed enjoyment of their rights, and in the unfettered exercise of their faculties, that Governments best minister to the public wealth and happiness. In effect, the free access to office is chiefly valuable when it is a part of general freedom.

110. With respect to those clauses of the Act which relate to ecclesiastical matters, no particular observation seems to be required from us. By the 102nd clause it is provided that nothing in the Act is to prevent you from granting, with the

sanction of the home authorities, to any sect, persuasion, or community of Christians, not being of the United Church of England and Ireland, or of the Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

111. We are not prepared with minute instructions on this head. The Act properly (we think) leaves it to you, who have under your observation the local circumstances of the several religious communities of India, to originate the measures to be taken, and we can only recommend that, in the execution of this duty, the intentions of the legislature may be liberally carried into effect.

112. You are required by section 103 to make and transmit to us annually a prospective estimate of the number of persons who, in your opinion, will be necessary, in addition to those already in India or likely to return from Europe, to supply the expected vacancies in the civil establishments of the respective Governments in India in such one of the subsequent years as shall be fixed in the rules and regulations therein mentioned.

113. It is evident that your advice and counsel are essential towards the final settlement of the requisite rules and regulations. We desire, therefore, with the approbation of the Commissioners for the Affairs of India, that you will consider what in your opinion would be the best rules and regulations to guide you in the preparation of the estimate. You will report to us the result of that consideration, and you will act in conformity with your own opinion until you hear our sentiments on your report.

114. The vacancies by death, and by return to Europe, can be anticipated pretty correctly by the experience of former years. There is another element, however, in the calculation which will require more consideration, and that is, the increase or diminution, as the case may be, of the demand which the business of government may present for covenanted functionaries appointed in this country.

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115. We have only to add that you are desired to frame the first estimate you send to us three years in advance, that is, the estimate framed next after January, 1835, is to state the number of persons that will be required to supply the respective vacancies in the year 1838, and you will continue annually to frame your successive estimates in the same manner until otherwise directed.

IV.—Minute by Lord Dalhousie on the Legislative Council established by the Government of India Act, 1853 (16 & 17 Vict. c. 95).

Minute by the Most Noble the Governor-General, dated the 17th May, 1854, concurred in by the Members of Government.

The Legislative Council.

1. By Proclamation issued on May 1 in terms of Act 16 & 17 Vict. c. 95, section 25, May 20 was appointed for the 'first meeting of the Council of India for making laws and regulations' under the said Act.

Upon that day the power of making laws and regulations now vested in the Governor-General of India in Council will cease. The Legislative Department of the Home Office must be abolished, and all legislative function whatsoever will reside in the Council of India as constituted by section 22 of the Act.

Section 25.

2. The term employed by the Act to designate the legislative body is 'the Council of India for making laws and regulations.' But as the Act further directs that the members

Section 22.

now to be added to the Council of India are to be 'distinguished as legislative councillors thereof,' I apprehend it will not be incorrect, and it certainly will be convenient, to call the body constituted for the framing of laws the 'Legislative Council,' so as to distinguish it from the 'Council of India' in its executive capacity.

3. The first act of the Legislative Council must be to determine the form of its proceedings, and the rules under which the preparation and discussion of legislative Acts shall

be carried on. This can be done only by the authority of the Legislative Council itself.

But as the members of that body will meet on the appointed day, necessarily without any previous concert, and as it is in the highest degree desirable that the council should be brought into practical operation as soon as possible, it has seemed to me that material aid for this purpose may be afforded by the Governor-General in Council, by resolving to communicate to the Legislative Council at its first sitting such document as would assist its early deliberations, and by suggesting respectfully the outline of the course of procedure which past practice would recommend as likely to be most simple and effectual.

I cannot doubt that the Legislative Council will not be disposed to regard this step as obtrusive, but will ascribe it to the real motive from which it springs, namely, a desire to afford all the assistance which the experience gained during the last twenty years of the work of legislation in India may enable the Governor-General in Council to offer.

4. With this view I propose that there should be laid on the table of the Legislative Council at its first meeting the Minutes of Mr. Macaulay and of the other members of council in 1835 relative to the proceedings of the Council of India for making laws and regulations; the standing orders then agreed upon and subsequently added from time to time; and a draft body of standing orders recently prepared to show the various provisions which are made in the standing orders of some of the colonial legislatures in this part of the world, in relation to questions which may fall under the consideration of the Legislative Council of India.

5. In determining the form of procedure to be observed by the Legislative Council, there are certain leading principles all of which I submit should be carefully and steadily kept in view.

(1) The proceedings of the council should be conducted with all due formality, and should be controlled by an authority emanating from the council itself.

CH. VIII. (2) For simplifying and expediting the work of legislation, the existing system of recording preliminary minutes should be avoided, and the whole discussions upon a draft Act, from the time of its introduction until it is passed by the council, should be carried on exclusively by oral discussion.

Paragraph 11. An exception to this prohibition of all writing may be made, but it will be more conveniently stated in its order in a subsequent paragraph.

(3) Careful provision should be made for the discouragement of superfluous or crude applications for legislation.

(4) The harmonious co-operation of the Council of India and of the Legislative Council should be facilitated by the forms of procedure of the latter body.

(5) Full opportunity for the discussion of every legislative measure should be afforded both to the Legislative Council and to the public, while its enactment should not be impeded by undue multiplication of forms and consequent facilities for possible obstruction.

I take the liberty of offering a few suggestions on each of these leading principles.

6. (1) 'The proceedings of the council should be conducted with all due formality, and should be controlled by an authority emanating from the council itself.'

It must be quite unnecessary for me to urge upon the attention of the Legislative Council the expediency of laying down fixed rules for the regular, orderly, and dignified transaction of the important business with which they will have to deal.

They will doubtless require that, here or elsewhere, members shall speak from their places, shall rise when they speak, and shall address themselves as the council may determine, either to the president, as in the House of Commons, or to the council collectively, as in the House of Lords.

They will doubtless require further the observance of measured and courteous language at all times in debate, and will exact an adherence to some conventional Parliamentary

phraseology (if I may use the expression) when members allude to other members of the council, or to authorities elsewhere.

For presiding over the deliberations of the council, the statute has nominated the governor-general or a vice-president to be appointed by him, or in their absence the senior member of the Council of India who may be present. But for controlling the order of those deliberations, authority must be conferred upon their president by the council itself. I apprehend the council will feel no hesitation in conferring that authority, and that they will at all times be prepared to uphold the legitimate exercise thereof.

7. (2) 'For simplifying and expediting the work of legislation, the existing system of recording preliminary minutes should be avoided, and the whole discussions upon a draft Act, from the time of its introduction until it is passed by the council, should be carried on exclusively by oral discussion.'

Experience must have shown so fully to every member of the Legislative Council the protracted delays and frequent paper controversies to which a practice of minuting if unchecked would lead, that the advantage of excluding all preliminary minuting from the discussions of the council cannot fail to commend itself to them. The council, like every other legislative assembly, will best and most effectually deliberate upon the Acts that may be brought before it by oral discussion in the several stages and under the several rules suggested in the succeeding paragraphs.

8. (3) 'Careful provision should be made for the discouragement of superfluous or crude applications for legislation.'

If the Legislative Council shall throw open its doors for the reception of applications for legislative enactment on all subjects, either direct to itself or through its members, I fear that they will be overwhelmed by a flood of proposals, many of which would be wholly uncalled for while many more would be loose and ill-considered.

To check superfluous applications for legislative enactments, it will probably be expedient that the council should lay down as one of their standing orders that no draft Act suggested from without will be taken into consideration, unless it shall be transmitted by the Government of the presidency or lieutenant-governorship in which the draft was originated, except in the case of a draft suggested by persons not being officers of the Government, which may be taken into consideration by the council, if it be introduced by a member, and although the local Government may have declined to transmit it.

This rule will provide a check upon unnecessary applications, while it will not prevent access being had to the council by any individual whose suggestions have been previously rejected by the local Government under which he lives, provided he can induce a member of the council to bring these suggestions forward.

An officer of the Government obviously should act in regard to legislation only through the Government he serves.

To check, as far as may be, crude applications for legislation, the council may advantageously follow the example of the Supreme Council, by requiring that every application for an Act should be accompanied by a draft of the Act required, regularly and properly drawn.

9. (4) 'The harmonious co-operation of the Council of India and of the Legislative Council should be facilitated by the forms of procedure of the latter body.'

To ensure such co-operation it appears to be expedient that legislative Acts of certain classes, when submitted from without, should be entertained by the Legislative Council only when transmitted by the Council of India.

The classes of enactments to which I refer are—(I) Acts affecting the public finances, (II) Acts affecting the constitution of the army, (III) Acts affecting the relations of the British Government with foreign States.

It must be manifest at once that the public revenue, the

army of India, and the relations of the Government with foreign States are matters of such direct interest to the Supreme Government, and of so great importance, that, if possible, legislation should only take place regarding them in concert with the Supreme Government. CH. VIII.

It is for this reason that I propose that the Legislative Council should resolve that any draft Act relating to any of these subjects should be received from without only when transmitted by the Council of India.

It is true that the Executive Government, independently of any such resolution, will practically possess an effectual control over such legislation by means of the veto with which the governor-general has been armed.

But all will feel that the frequent exercise of the power of refusing assent to Acts by the governor-general is almost as much to be deprecated as the utterance of 'Le Roi s'avisera' in the Imperial Parliament. It will, therefore, be very conducive to the public interests, if by a standing order, such as I have alluded to, the probability of conflict between the Supreme Council and the Legislative Council should be rendered remote.

It is of course to be understood that, while standing orders are thus proposed for regulating the admission of proposed Acts when received from without, it must at all times be competent to every member of the Legislative Council to prepare and to propose for the consideration of the council such legislative enactments as he may judge right.

10. (5) 'Full opportunity for the discussion and consideration of every legislative measure should be afforded to the Legislative Council and to the public, while the enacting thereof should not be impeded by undue multiplication of forms and consequent facilities for possible obstruction.'

For giving effect to this most important principle I beg to suggest the following rules:—

That every draft proposed or approved by any governor or lieutenant-governor shall be transmitted to the member of

CH. VIII. the Legislative Council appointed by such governor or lieutenant-governor, and that such member shall be responsible for bringing it, or causing it to be brought, under the consideration of the council.

That all correspondence which may be found necessary before the draft can be properly brought before the council shall be carried on by such member with the local Government which transmitted the draft.

That on a draft being ready for consideration, the member having charge of it shall give notice that, on a specified day, he will move the first reading of a draft Act for such and such purposes.

That accordingly on the day specified he shall move the first reading thereof, making a full statement of the object and intentions of the measure, and giving in with it a concise written statement of a similar nature, together with any extracts of correspondence which may be indispensably necessary for a right understanding of the draft.

That the draft Act shall be thereupon read a first time as a matter of course, and shall be printed with its annexures, and that a copy shall be sent to each member of the council.

That on the bill being thus read a first time, notice shall be given of the day on which the member will move the second reading thereof.

That on the day of which notice has been given, the second reading shall be moved. The member shall on this occasion address to the council such observations and arguments as he shall think necessary.

That at this stage a debate shall be taken on the principle of the draft Act.

That during such debate each member shall speak once only, except in strict explanation, the mover having a right of reply.

That if the second reading be agreed to, the draft Act shall then be published, as at present, for general information.

That if the draft Act shall require examination and con-

sideration in detail, it shall be remitted after the second reading to a select committee of three members, of whom the mover of the second reading shall be one.

That the select committee shall not report upon the draft Act until after the expiry of the period which may be agreed upon as sufficient for the information of the public, whether it be three months as at present, or some other period.

That, thereafter, the report of the committee on the draft Act shall be brought up by the chairman of the committee (who shall be the mover of the draft), that the bill shall be reprinted if necessary, and that notice shall be given of the day on which motion will be made that the report of the committee shall be taken into consideration by the council.

That on the day named, the council shall enter on the consideration of the report.

That the draft Act shall then be discussed, clause by clause, each member having a right to speak as often as he may please.

That, thereafter, the amended draft may be reprinted or not as may be found necessary; and that notice shall be given of the day on which the third reading will be moved.

That on motion being made for the third reading of the bill, debate may be taken, when each member shall speak once only as in the debate on the second reading, the mover having a right of reply.

That if the motion be agreed to, the draft Act shall be read a third time and passed.

Under the operation of these rules, full information respecting the draft Act will be given to the Legislative Council by the statement of the mover, and by the printed documents annexed to the draft. The draft may be fully discussed by the council collectively at three stages, viz. on the second reading, on considering the report of the select committee, and on the third reading. It will be carefully considered in its details by a small and selected body, who will have the

CH. VIII. advantage of hearing the sentiments of the public, for whose criticism it will be published.

These different provisions will ensure, I think, ample opportunity for discussion, without affording any undue facilities for obstruction.

11. Before the Act can be allowed to leave the Legislative Council, provision must be made for a circumstance peculiar exclusively to the legislature of India.

The Hon'ble Court of Directors possess a right of review of all Acts of the legislature, and may direct that they shall be repealed. To enable the Hon'ble Court to exercise effectually their right of review, the arguments for and objections against an Act must be before them. But if all the discussions of the Legislative Council are carried on orally, no statement of the arguments can be laid before the Hon'ble Court.

To supply this deficiency I propose that any member demanding to record his dissent and his 'reasons of dissent' from an Act which shall have been passed by the majority, shall be at liberty to do so; and any other members dissenting may affix their signatures to it, for all or any of the reasons specified thereon; and that the Hon'ble Court may have equally before them the arguments relied on by the supporters of the Act, it shall be competent to any member to record his 'reasons of assent,' to which other members may affix their signature.

But to prevent needless multiplication of record, one minute only should be recorded on each side, containing respectively reasons of dissent and reasons of assent.

12. The Act thus passed, with the record connected with it, must be laid before the Council of India in order to receive the assent of the governor-general.

If the governor-general should give his assent, the Act will be transmitted to the Court of Directors by the Governor-General in Council. If the governor-general should refuse his assent, the refusal will be communicated by the Governor-General in Council to the Legislative Council.

13. Having now drawn attention to the leading principles which experience seems to show the necessity of observing in the future proceedings of the Legislative Council, I do not venture to engage in the minor details of procedure, such as the arrangement of daily business, the places of members, the form in which motions and amendments are to be put, decisions, adjournments, and the like. These will be best left to the consideration of the committee of council.

14. There are two main points of detail, however, on which I think it right respectfully to advise the council.

The one is that communications between the Governor-General in Council and the Legislative Council should be made by message, to be brought by a member of the Council of India and by a member of the Legislative Council respectively.

The other point on which I wish to advise is, that the Legislative Council should apply for the appointment of a distinct officer of its own, to be called 'The Clerk of Council,' or by some similar name.

Even assuming that attendance on the Legislative Council should be considered to fall within the duties of the Secretary to Government in the Home Department, it would be absolutely impossible for that officer, under the most favourable circumstances, to discharge adequately the duties of Home Secretary and of secretary in attendance on the Legislative Council and its several committees. For this reason I conceive that the Legislative Council will find it indispensable to obtain the exclusive services of an officer for itself. It will be very desirable to select one whose qualifications will fit him for the peculiar duties he will have to perform.

The appointment of such an officer must rest with the Government, like the appointment of Clerk to the House of Lords and Clerk to the House of Commons. But there will be every desire on the part of the Governor-General in Council to appoint such a person as will suit the wishes and purposes of the Legislative Council.

15. A petition praying that the public may be allowed to

CH. VIII. be present at the debates of the Legislative Council will be communicated to it by the Governor-General in Council.

16. In conclusion, I beg to give assurance of my readiness to afford any aid which it may be in my power to offer to the Legislative Council in their preliminary arrangements, either by conferring personally with their committee, or in such other mode as they may point out.

(*Signed*) DALHOUSIE.

17*th May*, 1854.

(*Signed*) J. DORIN.

18*th May*, 1854.

(*Signed*) J. LAW.

18*th May*, 1854.

V. MINUTE BY SIR BARNES PEACOCK ON THE SYSTEMS OF LEGISLATION UNDER THE ACTS OF 1833 AND 1853.

The Right Hon'ble the Secretary of State for India has done me the honour of requesting my opinion, for the information of Her Majesty's Government, as to the merits of the system of legislation in India which preceded the 16th and 17th Vict. c. 95, in comparison with that which at present exists under the provisions of that Act.

In answering that question I have no hesitation in stating that, in my opinion, the present system is in every respect preferable to that which existed under the 3rd and 4th Will. IV, c. 85. By that statute the sole power of making laws and regulations in India was vested in the Governor-General of India in Council. That body consisted of the governor-general and four ordinary members of council; the commander-in-chief, if appointed an extraordinary member of council, also formed one of the body. Of the four ordinary members, it was directed that three should be appointed from persons in the covenanted service of the East India Company, and the fourth from persons who had never been in the service.

The duty of the fourth ordinary member was confined

entirely to the subject of legislation; he had no power to sit or vote except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right, that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of Government upon any subject not immediately connected with legislation.

In my own case, I was allowed to see the papers and minutes of consultation in the Home and Legislative Departments, but I was as ignorant of everything that was going on in the Foreign, Secret, Military, and Financial Departments as if I had not been a member of council. I am not urging this as matter of complaint, but I allude to it merely as part of the system. I always received the greatest courtesy and consideration from the Marquis Dalhousie and my hon'ble colleagues, and I believe that I had their confidence; but it was strictly in accordance with law that the fourth ordinary member of council should not sit or vote except at meetings for making laws and regulations. It was not necessary that he should be present to form a quorum at meetings for making laws, although he was particularly charged with the duties of legislation. All that was necessary was that the governor-general and three ordinary members should be present.

The following extract from a most eloquent and admirable dispatch of the Hon'ble Court of Directors, No. 44 of 1834, para. 21, refers more particularly to the duties of the fourth ordinary member:—

'The concurrence of the fourth member of council may be wanting to a law, and the law may be good still; even his absence at the time of enactment will not vitiate the law; but Parliament manifestly intended that the whole of his time and attention and all the resources of knowledge or ability which he may possess should be employed in promoting the due discharge of the legislative functions of the council. He has indeed no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share not only in the task of giving shape and connexion to the several

CH. VIII. laws as they pass, but also in the mighty labour of collecting all that local information, and calling into view all those general considerations which belong to each occasion, and of thus enabling the council to embody the abstract and essential principles of good government in regulations adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway.'

The principal share of the duties thus described devolved upon the fourth member, usually, though not necessarily, selected from the Bar, whose duration of office was generally limited to the period of five years, who probably had never passed a single day of his life in India, and who was generally on his arrival wholly unacquainted with the native languages. His laborious duties and the limited period of his holding office did not allow of his visiting various parts of India in order to collect local information or to ascertain by personal experience how the laws worked and were administered, and he was unable by personal communication with the natives to make himself acquainted with the manners, the feelings, the prejudices, or even the wants or wishes of the people, in legislating for whom he was to take a principal share. I heard much of the corruption of the native police, and of the inefficiency, to say the least of it, of the native judges, and often when a law was proposed by one person, I was told by another that the police would convert it into means of extortion, or that the native judges could not safely be entrusted with the powers which it proposed to confer upon them, or that the law was wholly unsuited to the habits or feelings of the people. I had not the means upon my first arrival in the country of forming a correct judgement upon these and other singular conflicts of opinion, and I must confess that, when I calmly considered the nature of the duties which I had undertaken, I felt almost appalled and overwhelmed.

Such duties appeared to me to surpass the powers of any one individual, even though he might possess the vast knowledge and the transcendent abilities of some of my predecessors

in office. I was determined, if my health permitted, to do everything which indefatigable labour and industry could effect, but this I found was but little. I often thought of the eloquent and forcible language of the Hon'ble Court of Directors, who in the dispatch above referred to, in speaking upon the subject of legislation in India, expressed themselves as follows:—

'In contemplating the extent of legislative power thus conferred immediately upon our Supreme Government, and in the second instance on ourselves; in considering that in the use of this power the difference between the worst and the best of governments mainly depends; in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable; in adverting to the countless variety of interests to be studied and of difficulties to be overcome in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we with you are conjointly laid. Whatever means or efforts can be employed on the occasion; whatever can be effected by free and active discussion or by profound and conscientious deliberation; whatever aids can be derived from extrinsic counsel or intelligence, all at the utmost will be barely commensurate with the magnitude of the sphere to be occupied, and of the service to be performed.'

I derived much valuable information from the researches and elaborate reports of the Indian law commissioners; but that body had ceased to exist before my arrival in India in 1852, and long before the introduction of the new system under the Act of 1853. Much of the time of the other ordinary members of council was necessarily occupied by executive duties, and it was almost impossible for the Governor-General in Council to devote sufficient time at meetings of the council to consider and discuss verbally the principles and the details of the various laws which were proposed and the conflicting opinions which were frequently elicited by the publication thereof for general information previously to their being passed, and it was out of the question to attempt to substitute written minutes for verbal discussions upon many of the subjects which necessarily came under consideration.

I was greatly indebted to the late Mr. John Colvin,

CH. VIII. Mr. Halliday, Mr. J. P. Grant, Mr. Beadon, and to the Government pleader, Ramapersaud Roy, for most valuable assistance which their practical experience enabled them to afford, and which they were always most willing to render. But they all had many other duties to attend to, and I should often have found it a great advantage to have had the benefit of verbally discussing matters with a body of gentlemen selected for such duties as those for which the Indian law commissioners were appointed, and to have had the benefit of their researches and experience.

By the Act of 1853, the duties which under the former Act rested principally upon the fourth ordinary member of council are performed by many.

The governor of each presidency and the lieutenant-governor of each lieutenant-governorship is empowered to appoint a legislative councillor. The legislative councillors so to be appointed must be members of the service of a certain standing, and consequently must have passed a considerable time in India, must be conversant with the native languages, and, when selected with reference to their peculiar qualification for the duties of the office, must necessarily be able to bring to bear upon every subject connected with legislation for India much useful knowledge and practical experience, and, in questions peculiarly affecting their respective presidencies, must have the advantage of being practically acquainted with local usages and the peculiar habits and prejudices of the people.

Such a system has many advantages over that which preceded it even whilst the Indian Law Commission was in full operation, for the legislative councillors have the power, which the law commissioners had not, of proposing any law which they may consider necessary or beneficial, of opposing any law which they may deem unnecessary or injurious, of supporting their opinion by argument in council, and of voting upon every subject which comes under discussion. The Legislative Council is not diminished in other respects,

for every member of the Executive Council, including the fourth member, who has now the power to sit and vote at all meetings, is also a member of the Legislative Council. It is simply increased by members of practical experience.

In addition to the legislative councillor, the Chief Justice of Bengal and one of the puisne judges of the Supreme Court selected by the governor-general are also members, and six members in addition to the governor-general or of the vice-president or chairman are necessary to form a quorum, and one of the judges or the fourth ordinary member must be present.

A body so composed must, in my judgement, be preferable to the legislative body under the old system, though I cannot say that it is the best that could be devised. In my opinion, it would be greatly improved by the introduction of some non-official members; but this, perhaps, is rather going beyond the question.

The fourth ordinary member has now a right to sit and vote upon all subjects in the Executive Council. This to a considerable extent prevents him from devoting to legislation as much time as he otherwise would be able to do; but it enables him to become better acquainted with all that is going on, and to form a better judgement as to the policy or impolicy of passing a particular law.

Upon the whole I consider this to be an advantage. Furthermore, under the present system there is a clerk and clerk assistant to the council. These offices are at present filled by gentlemen of great ability: the former by a barrister and an experienced draughtsman, well acquainted with the general principles of law and jurisprudence; the latter by a native gentleman intimately acquainted with the regulations of Government, with the various tenures of land, with the civil and criminal laws as administered in the mofussil, and with the regulations affecting the revenue and police.

The assistance which they are able to render cannot be

CH. VIII. overrated, especially in the preparation of new laws, and in attending upon the select committees when revising proposed laws after they have been published for general information.

Another great advantage of the present over the former system is the publicity of the discussions of the council. These discussions are generally conducted in a calm, orderly, and businesslike manner, and of course cannot be so attractive to the public as the discussions of a larger body in which the warmth and earnestness of party are called into play. But still I believe it is a source of satisfaction to the public to know that any one can without difficulty obtain admittance upon the discussion of any public measure, and that reporters for the public press are always in attendance. Formerly all discussions upon the subject of a proposed law were conducted in private in the same manner as the deliberations upon executive matters. If a law were rejected after it had been published for general information, the public had no means of knowing the cause of its rejection; so, if a law were published for general information, and alterations or modifications were suggested which were not embodied in the law when passed, the public had no means of ascertaining whether the suggestions had been duly considered, whether due weight had been given to them, or whether they had been rejected without sufficient reason.

Under the present system the case is different. The suggestions are duly considered and weighed by the select committees to whom the Bill is referred, and in all cases of importance are specially noticed in the reports. These reports are printed and published and are publicly sold. This I consider is also a great advantage which the present system has over that which formerly existed.

(*Signed*) B. PEACOCK.

November 3, 1859.

VI. EXTRACT FROM SIR C. WOOD'S SPEECH ON FIRST READING OF BILL FOR INDIAN COUNCILS ACT, 1861.

The main change proposed is, however, in the mode in which laws and regulations are enacted. The history of legislative power in India is very short. In 1773 the Governor-General in Council was empowered to make regulations for the government of India, and in 1793 those regulations were collected into a code by Lord Cornwallis. Similar regulations were applied in 1799 and 1801 to Madras and Bombay, and in 1803 they were extended to the North-West Provinces. The territory of Delhi, however, which was nominally under the sovereignty of the Great Mogul, was administered by officers of the Government of India, and with such good effect that in 1815, when Lord Hastings acquired certain provinces, he determined that they should be administered in the same way by commissioners appointed by the Government. The same system has been applied to the Punjab, Scinde, Pegu, and the various acquisitions made in India since that date. The laws and regulations under which they are administered are framed either by the Governor-General in Council or by the lieutenant-governors or commissioners, as the case may be, and approved by the governor-general. This different mode of passing ordinances for the two classes of provinces constitutes the distinction between the regulation and the non-regulation provinces: the former being those subject to the old regulations, and the latter those which are administered in the somewhat irregular manner which, as I have stated, commenced in 1815. There is much difference of opinion as to the legality of the regulations adopted under the latter system, and Sir Barnes Peacock has declared that they are illegal unless passed by the Legislative Council. The Act of 1833 added to the council of the governor-general a member whose presence was necessary for the passing of all legislative measures, and put the whole of the then territory of India under that body, at the same time withdrawing from Madras and Bombay the power of

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making regulations. In that way the whole legislative power and authority of India were centralized in the governor-general and council with this additional member. So matters stood in 1853, but great complaints had emanated from other parts of India of the centralization of power at Calcutta. The practice was then introduced of placing in the governor-general's council members from different parts of India. The tenor of the evidence given before the committee of 1852–53 was to point out that the Executive Council alone, even with the assistance of the legislative member, was incompetent to perform the increased duties which were created by the extension of territory. Mr. M'Leod, a distinguished member of the civil service of India, and who had acted at Calcutta as one of the law commissioners, gave the following evidence before the committee :—

'The governor-general with four members of council, however highly qualified those individuals may be, is not altogether a competent legislature for the great empire which we have in India. It seems to me very desirable that, in the Legislative Government of India, there should be one or more persons having local knowledge and experience of the minor presidencies; that is entirely wanting in the Legislative Government as at present constituted. It appears to me that this is one considerable and manifest defect. The governor-general and council have not sufficient leisure and previous knowledge to conduct, in addition to their executive and administrative functions, the whole duties of legislation for the Indian Empire. It seems to me that it would be advisable to enlarge the Legislative Council and have representatives of the minor presidencies in it, without enlarging the Executive Council, or in any way altering its present constitution.'

Mr. Hill, another eminent civil servant, said :—

'The mode of carrying out improvements must be by strengthening the hands of the legislature. . . . It would be a great improvement if, after the preparation of laws by the Executive Government and its officers, when the legislature met, they had the addition to their number of the chief justice and perhaps another judge of the Supreme Court, one or two judges of the Sudder Court, and the advocate-general, or some other competent persons—so that there should be a more numerous deliberative body.'

I quote these two opinions only, because they are so clearly

and concisely expressed. In consequence of the general evidence to that effect, I proposed in 1853 a measure adding to the council of the governor-general, when sitting to make laws and regulations, members from the different provinces of India, together with the chief justice and another judge of the Supreme Court of Bengal. My intention was, in accordance with the opinions I have cited, to give to the council the assistance of local knowledge and legal experience in framing laws. The council, however, quite contrary to my intention, has become a sort of debating society, or petty parliament. My own view of its duties is expressed in a letter I wrote to Lord Dalhousie in 1853, in which I said :—

'I expect the non-official members of your enlarged Legislative Council to be constantly employed as a committee of council in working at Calcutta on the revision of your laws and regulations.'

It was certainly a great mistake that a body of twelve members should have been established with all the forms and functions of a parliament. They have standing orders nearly as numerous as we have; and their effect has been, as Lord Canning stated in one of his dispatches, to impede business, cause delay, and to induce a council, which ought to be regarded as a body for doing practical work, to assume the debating functions of a parliament. In a letter which is among the papers upon the table of the house, Mr. Grant bears testimony to the success which has attended their labours in framing laws; and I will quote the words of another able Indian civil servant to the same effect. He says:—

'If it be assumed that the enlargement of the council by the addition of two judges of the Supreme Court and four councillors of the different presidencies of India was designed only as a means of improving the legislation of the country, the measure must be regarded as a complete success.

'The council has effected all that could be expected, and may with just pride point to the statutes of the last seven years as a triumphant proof that the intention of Parliament has been fulfilled.'

I think that is a very satisfactory proof that, as far as my intentions, and what I believe were the intentions of the

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> 'It has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth.'

These obvious objections were pointed out to me by the Government of India last year, and it was my intention to have introduced a measure upon the subject in the course of that session. I felt, however, so much difficulty in deciding in what shape the measure should be framed, that I deferred its proposal until the present year; and Lord Canning, who was very anxious that such a measure should be passed, consented to defer his departure from India in order that he, with his great experience of that country, might introduce the change. The present constitution of the council for legislative purposes having failed, we have naturally to consider what should be substituted, and in doing so we must advert to the two extreme notions with regard to legislation which prevail in India. The notion of legislation which is entertained by a native is that of a chief or sovereign, who makes what laws he pleases. He has little or no idea of any distinction between the executive and legislative functions of government. A native chief will assemble his nobles around him in the Darbar,

where they freely and frankly express their opinions; but having informed himself by their communications, he determines by his own will what shall be done. Among the various proposals which have been made for the government of India is one that the power of legislation should rest entirely on the executive, but that there should be a consultative body; that is, that the governor-general should assemble, from time to time, a considerable number of persons, whose opinions he should hear, but by whose opinions he should not be bound; and that he should himself consider and decide what measures should be adopted. In the last session of Parliament, Lord Ellenborough developed a scheme approaching this in character in the House of Lords; but hon'ble gentlemen will see, in the dispatches which have been laid upon the table, that both Lord Canning considers this impossible, and all the members of his Government, as well as the members of the Indian Council, concur in the opinion that, in the present state of feeling in India, it is quite impossible to revert to a state of things in which the Executive Government alone legislated for the country. The opposite extreme is the desire which is natural to Englishmen wherever they be—that they should have a representative body to make the laws by which they are to be governed. I am sure, however, that every one who considers the condition of India will see that it is utterly impossible to constitute such a body in that country. You cannot possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the native population of that empire. It is quite true that, when you diminish the area over which legislation is to extend, you diminish the difficulty of such a plan. In Ceylon, which is not more extensive than a large collectorate in India, you have a legislative body consisting partly of Englishmen and partly of natives, and I do not know that that Government has worked unsuccessfully; but with the extended area with which we have to deal in India, it would be physically impossible to constitute such a body. The natives who are

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'Now, if there be a fact to which all experience testifies, it is that, when a country holds another in subjection, the individuals of the ruling people who resort to the foreign country to make their fortunes are, of all others, those who most need to be held under powerful restraint. They are always one of the chief difficulties of the Government. Armed with the prestige and filled with the scornful overbearingness of the conquering nation, they have the feelings inspired by absolute power without its sense of responsibility.'

I cannot, therefore, consent to create a powerful body of such a character. It must be remembered, also, that the natives do not distinguish very clearly between the acts of the Government itself and the acts of those who apparently constitute it, namely, the members of the Legislative Council; and in one of Lord Canning's dispatches he points out the mischiefs which have on that account arisen from publicity. He says that, so far as the English settlers are concerned,

publicity is advantageous; but that if publicity is to continue, care must be taken to prevent the natives confounding the measures which are adopted with injudicious speeches which may be made in the Legislative Council. I feel it, therefore, necessary to strengthen the hands of the Government, so as to enable them not only by veto to prevent the passing of a law, but to prevent the introduction of any Bill which they think calculated to excite the minds of the native population; repeating the caution which I have before given, I say it behoves us to be cautious and careful in our legislation. I have seen a measure which I myself introduced in 1853, with one view, changed by the mode in which it was carried into execution so as to give it an operation totally different from that which I intended. The mischiefs resulting from that change have been great; and I am therefore anxious that in any measure which I may propose, and which the House, I hope, will adopt, we should take care, as far as possible, to avoid the likelihood of misconstruction or misapplication by the Government of India. It is easy at any future time to go further, but it is difficult to draw back from what we have once agreed to. The dispatches of Lord Canning contain pretty full details of the scheme which he would recommend. Those dispatches have been long under the consideration of the Council of India, and with their concurrence I have framed a measure which embodies the leading suggestions of Lord Canning. I propose that, when the governor-general's council meets for the purpose of making laws and regulations, the governor-general should summon, in addition to the ordinary members of the council, not less than six nor more than twelve additional members, of whom one-half at least shall not hold office under Government. These additional members may be either Europeans, persons of European extraction, or natives. Lord Canning strongly recommends that the council should hold its meetings in different parts of India, for the purpose of obtaining at times the assistance of those native chiefs and noblemen whose attendance at Calcutta would be impossible,

CH. VIII. or irksome to themselves. I do not propose that the judges *ex officio* shall have seats in the legislature; but I do not preclude the governor-general from summoning one of their number if he chooses. They were useful members of a body meeting as a committee for the purpose of discussing and framing laws, but I think it is inexpedient and incompatible with their functions that they should belong to a body partaking in any degree of a popular character. I propose that the persons nominated should attend all meetings held within a year. If you compel their attendance for a longer period, you render it very unlikely that any natives except those resident upon the spot will attend the meetings of the council. This also is recommended by Lord Canning. Hon'ble gentlemen will have noticed the great success which has attended the association with us of the talookdars of Oudh and of the sirdars in the Punjab in the duties of administering the revenue, and Lord Canning has borne testimony to the admirable manner in which they have performed their duties. I believe greater advantages will result from admitting native chiefs to co-operate with us for legislative purposes; they will no longer feel, as they have hitherto done, that they are excluded from the management of affairs in their own country, and nothing, I am persuaded, will tend more to conciliate to our rule the minds of natives of high rank. I have no intention of doing anything to make this council a debating society. I wish, to quote an expression of Sir Lawrence Peel, to render them a body for making laws. The council of the governor-general, with these additional members, will have power to pass laws and regulations affecting the whole of India, and will have a supreme and concurrent power with the minor legislative bodies which I propose to establish in the presidencies and in other parts of India. I come now to the power of making laws which I propose to give the governors and councils of the other presidencies. Lord Canning strongly feels that, although great benefits have resulted from the introduction of members into his council who possess a

knowledge of localities—the interests of which differ widely in different parts of the country—the change has not been sufficient, in the first place, to overcome the feeling which the other presidencies entertain against being overridden, as they call it, by the Bengal Council; or, on the other hand, to overcome the disadvantages of having a body legislating for these presidencies without acquaintance with local wants and necessities. This must obviously be possessed to a much greater extent by those residing on and nearer the spot. And therefore I propose to restore, I may say, to the presidencies of Madras and Bombay the power of passing laws and enactments on local subjects within their own territories, and that the governor of the presidency, in the same manner as the governor-general, when his council meets to make laws, shall summon a certain number of additional members, to be, as before, either European or native, and one-half of whom at least shall not be office-holders. It is obviously necessary that these bodies should not be empowered to legislate on subjects which I may call of Indian rather than of local importance. The Indian debt, the customs of the country, the army of India, and other matters, into the details of which it is not necessary that I should enter, belong to a class of subjects which the local legislatures will be prohibited from entering upon without the sanction of the governor-general. I propose that councils rather differently constituted should be established at Bengal; and, if the governor-general thinks right, as he obviously does from his dispatches, that he shall be empowered hereafter—but not without the sanction of the Secretary of State—to create a council for the North-West Provinces, or the Punjab, or any other part of India which he may think desirable. It has been represented that the province of Pegu might, perhaps, be constituted into a separate Government with a council. I somewhat doubt whether it is at present ripe for such a change; but when it has acquired sufficient importance, no doubt the district will be better administered in that way than it is at present. By this means, while

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we shall attain a general uniformity of legislation, with a sufficient diversity for the differences of each part of India, we shall, I hope, adapt the system to the wants of particular localities. It is quite clear that the public works may be better dealt with by local bodies than by a central authority; but as each district might be disposed to repudiate liability to maintain its share of the army, on the ground that it would not be first exposed to danger, and it is highly desirable that the distribution of troops should be in the hands of the central authority, I think that the army, among others, is a subject which should be left to the general council. The Bill also gives power to the governor-general in cases of emergency to pass an ordinance having the force of law for a limited period. Questions might arise about the Arms Act, or the press, as to which it would be very injudicious that delay should occur; and we therefore propose to empower the governor-general on his own authority to pass an ordinance having the force of law to continue for a period of six months unless disallowed by the Secretary of State or superseded by an Act of the legislature.

VII. SIR CHARLES WOOD'S DISPATCH ACCOMPANYING INDIAN COUNCILS ACT, 1861.

Dispatch.

From Sir CHARLES WOOD, Bart., G.C.B., Her Majesty's Secretary of State, to His Excellency the Right Hon'ble the GOVERNOR-GENERAL of India in Council (Legislative).—No. 14, dated India Office, London, August 9, 1861.

MY LORD,—I herewith transmit a copy of the Act [1] recently passed by Parliament, to make better provision for the constitution of the council of the Governor-General of India, and other purposes, and in so doing I take the opportunity of acknowledging the receipt of the letters noted in the margin [2], and at

[1] 24 & 25 Vict. c. 67.

[2] Governor-General's letter, No. 2 A, dated January 15, 1861.
Governor-General's letter, No. 3 A, dated January 26, 1861.
Letter from Government of India, Public Department, No. 10, dated January 31, 1861.

the same time of expressing my obligations for the valuable assistance I have derived from the several communications which I have received from your Lordship in Council, bearing on the important subjects for which provision is made by the Act.

2. In forwarding to your Lordship in Council the Act which brings to a close the labours of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has effected in the legislation of India. Since the year 1853, when the council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and the result of its labours has been to place on the statute book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government.

3. The principal objects contemplated by the present Act are to impart greater efficiency to the Government of India and to the Governments of the presidencies of Madras and Bombay in the discharge of their executive functions; to prescribe the mode in which the power of making laws and regulations is henceforth to be exercised by the council of the governor-general; to restore to the councils of the subordinate presidencies, at the same time that they are strengthened for the purpose, the power of legislation; to authorize the Governor-General in Council, acting under the sanction of the home Government, to confer upon lieutenant-governors of provinces the power of making laws and regulations (with the aid of persons specially summoned for that purpose) for the provinces which they respectively govern; and to provide for the temporary government of India in the event of a vacancy in the office of governor-general. To the most important

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provisions of the Act bearing on these several matters I propose to refer more particularly in the sequel of this dispatch.

4. An important alteration has been made in the constitution of the Executive Council of the Governor-General by the adoption of your lordship's recommendation that power should be obtained from Parliament for the appointment by the Crown of two members (instead of one), one of whom shall be a barrister. Steps will be immediately taken for filling up the appointment thus created by the Act.

5. By the fourth section of the present Act ordinary members of the council continue to be ordinary members of council under the Act. It is not my intention to deviate from the usual practice respecting the time for which a seat in council has been held; and with respect to the members of the council who will continue to hold their seats under the present Act, the term of five years will be reckoned from the time when they respectively first took their seats in council. The question of the salaries of future members of council will be considered by me in council, and the result communicated to your Government.

6. Hitherto it has been the practice, on the occasion of the governor-general quitting the presidency for any other part of India, to pass an Act providing for the exercise by him of executive powers during his absence. By section 6 of the Act now forwarded, resort to legislation in such case is rendered unnecessary, and an order of the Governor-General in Council is substituted for an Act of the legislature.

7. The only other provision of the Act relating to the Executive Council of the Governor-General to which I consider it necessary to advert is section 8, which authorizes the governor-general, from time to time, to make rules and orders for the more convenient transaction of business in his council. By the arrangement of the business already made by your Lordship in Council, a remedy has of late years been applied to the cumbrous mode of conducting business which formerly prevailed. The expediency of such arrangements, and of

carrying them to such an extent as the governor-general may think desirable for the more convenient dispatch of public business, is formally recognized by section 8.

8. I need hardly impress upon your lordship the necessity of caution in framing the rules and orders so as not to exceed the limit of the discretion conferred upon the governor-general by this section of the Act. The object to be kept in view is the *more convenient transaction of business*. There is nothing in the provision of a nature to detract from the authority or responsibility of the governor-general, or of the council.

9. I concur with your lordship that, after the system of departmental responsibility in the manner proposed shall have come into operation, the salaries of some of the secretaryships of the Government of India will admit of reduction, and that those which now stand at £5,000 per annum each might, on vacancies, reasonably be reduced to £4,000 per annum.

10. Considerable discussion and interchange of opinion between Her Majesty's Government and your Lordship in Council has recently taken place in regard to the best mode of conducting the legislation of India, and on this subject the Act contains some very important provisions. The power of legislation, taken away from the councils of the subordinate presidencies by the Act of 3 & 4 Will. IV, c. 85, is, to a great extent, to be restored to them, and new local legislatures are to be established in other parts of India. The legislative powers conferred on the Government of India by the above-mentioned Act are left unimpaired, but under the present Act are to be exercised, for the most part, in matters of general administration, and such as affect the interests of our Indian Empire at large.

11. I proceed to notice some of the most important provisions by which these changes are to be effected.

12. In consequence of the repeal, by section 2 of the present Act, of section 22 of the Act of the 16th & 17th Vict., c. 95, the legislative councillors appointed under the repealed enactment will cease to hold office in the council on the present Act coming into operation. Provision is made by section 10 for the

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appointment of other additional members of the council of the governor-general, who are to be members only for the purpose of making laws and regulations. They are to be selected by the governor-general from the servants of the Government and from other residents in India, European and native, from all parts of India, the only limitation on the power of the selection being that not less than one-half of the number nominated are to be persons not holding any office under Government.

13. The Imperial Legislature has by this Act provided, for the first time, for the admission of Europeans independent of the Government and of natives of India to take part in the important work of legislating for India. I have no doubt this measure will be hailed with satisfaction throughout the country. I entertain as little doubt that your lordship will be able to fill up these appointments with persons in every way qualified to give the Government important and valuable assistance in matters that may come before it, and I anticipate that the introduction of intelligent native gentlemen into the council will bring to its deliberations a knowledge of the wishes and feelings of the native population, which cannot fail to improve the laws passed by the council by adapting them to the wants of the great mass of the population of India.

14. I am quite aware that there cannot but be considerable difficulty in assembling, at any one place, official and non-official persons from distant parts of India, who may bring to the council of the governor-general the advantage of their knowledge of different parts of the country. The grant of legislative powers to councils in other parts of India renders it less necessary to have such persons present in your lordship's council, where at present the whole legislation of India is concentrated; but, nevertheless, I think it most desirable that servants of the Government in the other presidencies, and from the North-West and the Punjab, should be summoned to a body which is to legislate on matters affecting the whole of India; and I shall be glad to find that influential native gentlemen from distant places have, even at some

personal inconvenience to themselves, responded to the call of the head of the Government to take their places in the council when legislating for the peace and good government of their country.

15. To enable your lordship the more readily to avail yourself of the services of such persons as occasion may require, as well as to obviate the necessity for issuing fresh summonses simultaneously for the whole number of additional councillors on the expiration of the term of service of those first appointed, which the immediate nomination of the entire number will impose, I think it expedient that your lordship should not summon at once the maximum number of members allowed by the Act, but appointing part of them at first, should leave the remaining number to be nominated at such times and on such occasions as your lordship may think proper.

16. It will be the duty of your Lordship in Council to make in the first instance, subject to subsequent alteration at meetings for the purpose of making laws and regulations, the rules for the conduct of business at such meetings. The experience of the past has shown, as it appears to me, that an error was committed in adopting numerous rules under the name of 'Standing Orders,' and thereby imparting to the proceedings of the council a much more formal character than was contemplated by the Act of 1853. The rules of procedure at meetings for making laws and regulations should be few and simple, and the business should be conducted, agreeably to your lordship's suggestion, much in the same way as in a committee or a commission. This is the more indispensable in the council of the governor-general, as well as in those of the North-West and the Punjab, where native gentlemen unacquainted with the English language may not improbably be present, and who will be prevented from taking their part in the business of the council, unless some such arrangement be made.

17. No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature

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deliberation and discussion, and the intervals of discussion should be such as to allow the members of council adequate opportunity of reflection and inquiry.

18. As to the publicity which should attend the proceedings of the councils at meeting for making laws and regulations, I concur very much in the remarks of your lordship in your letter of January 15 last. In the local councils of Calcutta, Madras, and Bombay, in which it is probable that all the members, including natives, will speak the English language, I am not disposed to interfere with the present practice; but it may be necessary to vary the mode of publishing the reports of discussions, as suggested by your lordship, in the council of the governor-general, and of the North-West Provinces and the Punjab. Your lordship has stated, in your dispatch of January 15 last, the evil which has been caused by the publication of speeches delivered in the Legislative Council, and the impression made by them on the native population. Care should be taken, by an early publication of the views of the Government, to prevent the public mind being misled, and other means will probably occur to you for meeting this particular difficulty.

19. I think it of the highest importance that correct reports of the proceedings of the several councils, under the authority of the council itself, should be sent forth to the public, and I request that you will take into your consideration measures for ensuring this very desirable object.

20. You will transmit to me a copy of the rules as soon as you shall have prepared them.

21. I entertain a decided opinion that the councils should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. It is probable that, by adopting this course, Bills will come before the council better prepared than when hurriedly framed for a council in session,

and will be better considered by the council when brought before them, and thus much unnecessary legislation will be avoided, and much public time saved. The adoption of this plan, moreover, will be necessary to secure for you the services of native gentlemen at a distance, and of those persons whose time, like that of the members of the mercantile communities of the presidency towns, is much occupied with their own private engagements.

22. You will observe that no provision is made for the appointment of a vice-president at meetings for the purpose of making laws and regulations. In the absence of the governor-general and the president of the council, the senior member of the council will preside.

23. The additional councillors provided for by the Act are to be called in to assist the council of the governor-general in matters of legislation. Members of the council will of course exercise their independent judgement in regard to matters brought before them, but the council at its meetings for making laws and regulations is not to be a body separate and distinct from the council of the governor-general. Petitions relating to legislative matters should be addressed to the Governor-General, or Governor, or Lieutenant-Governor in Council, as the case may be; and in recording its proceedings, each council should be designated according to the form followed in the Act, and no other.

24. I may frankly state to your Lordship in Council that one object of section 19 is to prevent the legislature from interfering with the functions of the Executive Government, and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it. The closing proviso of the section is in accordance with Lord Dalhousie's recommendation to the council in his minute of May 17, 1854, and Nos. 60 and 61 of the Standing Orders. This section renders unnecessary any separate reply to your letters in the Legislative Department, Nos. 6 and 7, dated respectively March 14 and 18 last.

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25. Sections 20, 21, and 22 are re-enactments of former provisions, with such alterations as are rendered necessary by the changes effected by the present Act, and by the transfer of the government of India from the East India Company to the Crown.

26. By section 23 the Governor-General of India is vested with a new and extraordinary power of making and promulgating ordinances in cases of emergency on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security, and good government of that vast territory, that he should be armed with this power, but it is to be called into action only on urgent occasions; the reasons for a resort to it should always be recorded, and these, together with the ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.

27. By section 25 doubts are removed as to the validity of rules and regulations which have been passed by any of the Governments in India for the territories known as 'Non-Regulation Provinces.' You will observe, however, that henceforth legislative measures affecting any of the territories, regulation or non-regulation, under the dominion of Her Majesty at the date of the passing of the Act, must be passed either by the council of the governor-general, or by that of the Government to which such territories may be subject.

28. It has been found necessary, on some occasions, to grant leave of absence for a short period, on medical certificate, to a member of the Executive Council, though he was not admitted by law to this privilege. This has now been sanctioned by section 26, and by section 27 the governor-general, or the governor of a minor presidency, as the case may be, is authorized, when no provisional appointment has been made from home, to make a temporary appointment to the office of councillor either on the occurrence of a vacancy, or when the incumbent may be absent.

29. It is unnecessary for me to enter into any detail as to sections 28 to 41, which, *mutatis mutandis*, contain, in regard to the Governments of Madras and Bombay, the same provisions as have been enacted in previous corresponding sections, in relation to the Supreme Government.

30. By section 42 the power is conferred upon the Governor in Council (constituted as stated in section 29) of each of those presidencies to make laws and regulations for the territories subject to his authority. Your lordship will observe, however, that, while the power of legislation is, to a great extent, thus restored to the minor presidencies, much greater control over the exercise of that power is given to the Governor-General of India than was the case before the passing of the Act 3 & 4 Will. IV, c. 85. The rules for the conduct of business at meetings of the councils for making laws and regulations are to be submitted for the sanction of the Governor-General in Council[1], and no law or regulation is to have validity until sanctioned by the governor-general[2].

31. It is advisable that the several Legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdictions. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character; and it will be no ground for condemning a measure on any particular subject passed for one presidency that it differs, in some respects, from another measure on the same subject for another presidency. There will, however, always remain some important subjects to which, for the most part, general legislation alone is applicable, and which should be reserved to be dealt with by the council of the governor-general. Such are the subjects specified in section 43 of the Act. If, however, it should appear to the governor-general more expedient that enactments on any of those subjects, so far as regards any presidency or lieutenant-governorship, may

[1] Section 37. [2] Section 40.

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be more conveniently passed by the Governor or Lieutenant-Governor in Council, legislation in regard to those subjects by the local legislature, with the previous sanction of the governor-general, is permitted by the terms of the section.

32. There is nothing in the terms of the section, or in any other part of the Act, which takes away from the council of the governor-general the power of legislation in regard to all matters whatsoever connected with any part of Her Majesty's dominions in India, and it is possible that there may be other subjects than those enumerated, which may be considered as properly coming within the cognizance of the highest legislative authority. The division of legislative measures into two classes will not be difficult, and as a general rule the supreme legislature should as little interfere with matters of local administration as a local legislature should be permitted to interfere with those matters of the general administration which are reserved to be dealt with by the council of the governor-general.

33. By sections 44 to 48, inclusive, the Governor-General in Council is empowered to extend the provisions of the Act touching the making of laws and regulations for the presidencies of Madras and Bombay to the Bengal division of the presidency of Fort William, to the North-West Provinces, the Punjab, and to any other provinces which may hereafter be placed under a lieutenant-governor under section 46. Your Lordship in Council will decide upon the number of additional councillors to be nominated by each lieutenant-governor, which in no case should exceed the number allowed by the Act to the governors of Madras and Bombay.

34. I gather from communications already received that your lordship will deem it expedient to give effect without delay to the provisions of the Act in Bengal, the North-West Provinces, and the Punjab. Her Majesty's Government are of opinion that, as regards the Bengal division of the presidency of Fort William, the change should be introduced with as little delay as possible: and I leave it to your lordship to

determine at what time you will take the same course as regards the North-West Provinces and the Punjab.

35. With reference to the foregoing remarks, I have now to request that your Lordship in Council will take immediate measures for placing the council of the governor-general for making laws and regulations on the footing prescribed by the Act, and enter into communication with the Governments of Madras and Bombay respecting the adoption of the necessary measures for bringing the Act into operation in those presidencies. When your measures shall be sufficiently matured to admit of practical effect being given to the provisions of the Act in your own council, and in the councils of the governors of Madras and Bombay, you will announce the same by proclamation in the official gazettes of the several presidencies, until which time the power of making laws and regulations will, under section 16 of the Act, continue to be exercised by the council of the governor-general as constituted by the Act of the 16th and 17th Vict., c. 95.

36. You will then take the necessary steps for extending such of its provisions as relate to the making of laws and regulations in the presidencies of Madras and Bombay, to the Bengal division of the presidency of Fort William. It will be seen from section 49 that the proclamation by the Governor-General in Council for constituting any council for the purpose of making laws and regulations must be transmitted to the Secretary of State for the previous sanction of the Crown. To this provision you will carefully adhere, forwarding the proclamation relating to the Bengal division with as little delay as possible, and those relating to the North-Western Provinces and the Punjab either with it, or at such future periods as your Lordship in Council may deem expedient.

37. With regard to section 50, it is only necessary to observe that, when no provisional successor to the office of governor-general shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by

CH. VIII. Her Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and until he assumes the function of governor-general the government will be administered, as heretofore, by the senior ordinary member of council, as would be done under the provisions of the 3rd & 4th Will. IV, c. 85, s. 62, if no provisional successor were on the spot.

38. Of the projects of law now under consideration, I am very anxious that the code of criminal procedure should be passed before the present Act comes into operation. Of the rest, some have got to that stage which renders it advisable that they should be enacted by the legislature as at present constituted, while others, especially those of a local character, may be withdrawn, and re-introduced, if necessary, into the councils to which, under the new system, they will respectively belong.

39. Your Lordship in Council will impress upon the subordinate Governments the necessity of keeping the establishments required for conducting the legislative business of the councils at as low a point as is consistent with efficiency.

40. It only remains for me, in conclusion, to express the great gratification I feel in being permitted to avail myself of your lordship's assistance in giving effect, before you quit India, to the intentions of the Imperial Legislature. I look with great confidence to the advantage which will be derived from the commencement of the new system under your lordship's directions. Your lordship's experience in India, and the attention which you have given to this most important subject, render your lordship most eminently fitted to give effect to the measures introduced by the Act for the government and legislation of India; and the successful accomplishment of this may be the last, though it will not be the least, of the services which you will have rendered to your sovereign in that country.

VIII. THE MUTINY PROCLAMATION.

Proclamation by the Queen in Council, to the Princes, Chiefs, and People of India[1].

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon ourselves the government of the territories in India, heretofore administered in trust for us by the Honourable East India Company.

Now, therefore, we do by these presents notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said government; and we hereby call upon all our subjects within the said territories to be faithful, and to bear true allegiance to us, our heirs and successors, and to submit themselves to the authority of those whom we may hereafter, from time to time, see fit to appoint to administer the government of our said territories, in our name and on our behalf.

And we, reposing especial trust and confidence in the loyalty, ability, and judgement of our right trusty and well-beloved cousin Charles John, Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be our first Viceroy and Governor-General in and over our said territories, and to administer the government thereof in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall, from time to time, receive through one of our Principal Secretaries of State.

And we do hereby confirm in their several offices, civil

[1] Calcutta Gazette, Nov. 1, 1858.

CH. VIII. and military, all persons now employed in the service of the Honourable East India Company, subject to our future pleasure, and to such laws and regulations as may hereafter be enacted.

We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fill.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially

admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.

We know, and respect, the feelings of attachment with which natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their countrymen by false reports, and led them into open rebellion. Our power has been shown by the suppression of that rebellion in the field; we desire to show our mercy by pardoning the offences of those who have been misled, but who desire to return to the path of duty.

Already, in one province, with a desire to stop the further effusion of blood, and to hasten the pacification of our Indian dominions, our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who, in the late unhappy disturbances, have been guilty of offences against our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of our Viceroy and Governor-General, and do further announce and proclaim as follows:—

Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly taken part in the murder of British subjects. With regard to such the demands of justice forbid the exercise of mercy.

To those who have willingly given asylum to murderers, knowing them to be such, or who may have acted as leaders or instigators of revolt, their lives alone can be guaranteed; but in apportioning the penalty due to such persons, full

CH. VIII. consideration will be given to the circumstances under which they have been induced to throw off their allegiance; and large indulgence will be shown to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing men.

To all others in arms against the Government we hereby promise unconditional pardon, amnesty, and oblivion of all offences against ourselves, our crown and dignity, on their return to their homes and peaceful pursuits.

It is our royal pleasure that these terms of grace and amnesty should be extended to all those who comply with these conditions before the 1st day of January next.

When, by the blessing of Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people.

IX. WARRANT OF APPOINTMENT OF THE VICEROY AND GOVERNOR-GENERAL OF INDIA.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India.

The Earl of Elgin and Kincardine appointed Viceroy and Governor-General of India.

To Our Right Trusty and Right Well Beloved Cousin and Councillor, Victor Alexander, Earl of Elgin and Kincardine, Greeting.

Whereas by an Act passed in the Session of Parliament holden in the 21st and 22nd years of Our Reign, intituled 'An Act for the better Government of India,' it is enacted that the appointment of Governor-General of India

shall be made by Us by Warrant under Our Royal Sign Manual:

Now know that We, reposing especial trust and confidence in the Fidelity, Prudence, Justice, and Circumspection of you the said Victor Alexander, Earl of Elgin and Kincardine, have nominated, made, constituted, and appointed you, the said Victor Alexander, Earl of Elgin and Kincardine, to be Governor-General of India and of all and singular Our Forts, Factories, Settlements, Lands, Territories, Countries, Places, and Provinces which now are or shall from time to time be subject to or under Our Government in the East Indies, and to execute all and every the powers and authorities committed, continued, or given to Our Governor-General of India, by or under or in virtue of a certain Act passed in the Session of Parliament holden in the 3rd and 4th years of the Reign of His late Majesty King William the Fourth, chapter 85, and by or under or in virtue of any other Act or Acts of Parliament now in force, to take upon you, hold, and enjoy the said Office upon and from the death, resignation, or coming away of Henry Charles Keith, Marquis of Lansdowne, Governor-General of India, whichever of those events shall first happen, and to continue in the exercise of the said Office during Our Will and Pleasure, subject nevertheless to such Instructions and Directions as you the said Victor Alexander, Earl of Elgin and Kincardine, shall as Governor-General of India or as Governor-General of India in Council from time to time receive under the hand of one of Our Principal Secretaries of State. And We do hereby authorize and empower and require you, the said Victor Alexander, Earl of Elgin and Kincardine, to execute and perform all and every the powers and authorities to the said Office of Governor-General of India appertaining. And We do hereby give and grant unto you, the said Victor Alexander, Earl of Elgin and Kincardine, Our said Governor-General of India and your Council as the Governor-General of India in Council the superintendence, direction, and control of the

CH. VIII. whole Civil and Military Government of all Our said Territories and Revenues in India, with full power and authority to superintend and control the Governors and Governors in Council respectively of all Our Presidencies in the East Indies in all points relating to the due administration of such Presidencies respectively: and also with all such powers and authorities jointly, severally, and respectively, and subject to all such restrictions and conditions as are given to them respectively or created by or under or by virtue of the said Act passed in the Session of Parliament holden in the 3rd and 4th years of the reign of His said late Majesty King William the Fourth or any other Act or Acts of Parliament now in force. And We do hereby order and require all Our Servants, Officers, and Soldiers in the East Indies, and all the people and inhabitants of the Territories under Our Government, and also all Our Governors and Councils of Our respective Presidencies in the East Indies, to conform, submit, and yield due obedience unto you, the said Victor Alexander, Earl of Elgin and Kincardine, Our said Governor-General of India and your said Council accordingly.

Given at Our Court at Balmoral the 26th day of October in the year of Our Lord one thousand eight hundred and ninety-three, in the fifty-seventh year of Our reign.

By Her Majesty's Command,

(*Signed*) KIMBERLEY.

X. LETTERS PATENT APPOINTING THE VENERABLE DR. EDWARD RALPH JOHNSON BISHOP OF CALCUTTA.

November 27, 1876.

Gazetted Nov. 24, 1876.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, to all to whom these presents shall come, Greeting. Whereas His late Majesty King George the Third did by Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing

date the second day of May, in the fifty-fourth year of His Reign, erect, found, and constitute Our Territories under the Government of the East India Company to be a Bishop's See and to be called from thenceforth the Bishopric of Calcutta, and His said late Majesty by His same Letters Patent did give and grant to Thomas Fanshawe Middleton the first Bishop of Calcutta full power and authority to perform all the functions peculiar and appropriate to the Office of a Bishop within the limits of the said See but not elsewhere, and also by himself or themselves or by his or their Commissary or Commissaries to exercise jurisdiction spiritual and ecclesiastical in and throughout the said See and Diocese according to the Ecclesiastical Laws of England in the several causes and matters therein expressed and specified and no other; and His said late Majesty by His said Letters Patent did make a further declaration concerning the special causes and matters in which he would that the aforesaid jurisdiction be exercised, and did give and grant to the aforesaid Bishop and his Successors certain powers and authorities for the performance of his and their Episcopal Functions, subject however to certain limitations and reservations as on reference to the said Letters Patent will more fully appear. And whereas His said late Majesty King George the Third did by Letters Patent under the Great Seal of Our United Kingdom, bearing date the fifteenth day of August in the fifty-seventh year of His Reign, erect, found, and constitute an Archdeaconry within the British Territories in the East Indies, (that is to say) at Colombo in the Island of Ceylon, to be styled the Archdeaconry of Colombo, such Archdeaconry to be subject during the Royal Pleasure to the jurisdiction spiritual and ecclesiastical of the Bishop of Calcutta for the time being; and whereas His said late Majesty by other Letters Patent under the Great Seal of Our said United Kingdom, bearing date the fifteenth day of August in the said fifty-seventh year of His reign, in order to give full effect to His Royal Intention

CH. VIII. in respect of the said Archdeaconry of Colombo and for removing all doubts touching the jurisdiction of the Bishop of Calcutta and his Successors over the said Archdeacon and Archdeaconry, did give and grant to the Bishop of Calcutta and his Successors all and singular the rights, powers and authorities, functions and jurisdictions in and over the said Archdeaconry and Archdeacon of Colombo which he and they might lawfully exercise in and over the three Archdeaconries of Calcutta, Madras, and Bombay, except the right of collating to the said Archdeaconry of Colombo. And whereas His late Majesty Our Royal Uncle King George the Fourth, by Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland bearing date the twenty-seventh day of May in the fourth year of His Reign, after reciting (amongst other things) as hereinbefore is recited, and that by the demise of the said Thomas Fanshawe Middleton the said See or Bishopric of Calcutta had become and was then vacant, did nominate and appoint Reginald Heber, Doctor in Divinity, to be Bishop of the said See and Diocese of Calcutta: and did also by the same Letters Patent now in recital ordain and declare His Royal will and pleasure that from thenceforth the whole of His Majesty's Territories within the limits of the Charter of the United Company of Merchants of England trading to the East Indies should form and constitute the See and Diocese of Calcutta, and did thereby give and grant to the said Archbishop of Calcutta and his Successors during His Royal Pleasure all and singular the rights, powers, authorities, functions, and jurisdictions in and over all and every Our Territories within the limits of the Charter of the said United Company of Merchants of England trading to the East Indies which he and they might lawfully exercise in and over the Territories under the Government of the said United Company by virtue of the hereinbefore recited Letters Patent of the said second day of May in the fifty-fourth year of the reign of His late Majesty King George

the Third, or in and over our Territories in the Island of Ceylon by virtue of the said first recited Letters Patent of the fifteenth day of August in the fifty-seventh year of His then late Majesty's reign and the said last recited Letters Patent of the fifteenth day of August in the said fifty-seventh year of His then late Majesty's reign or either of them, subject to several limitations, reservations, and provisions which in the same several Letters Patent are fully set forth. And whereas His late Majesty Our Royal Uncle King William the Fourth did by Letters Patent under the Great Seal of Our said United Kingdom of Great Britain and Ireland bearing date the sixteenth day of April in the Third year of his Reign appoint Daniel Wilson, Doctor in Divinity, to be Bishop of the said Bishopric of Calcutta, which had become and was then vacant by the death of the Right Reverend Father in God John Mathias Turner, then late Bishop of Calcutta. And whereas by a certain Statute made and passed in the Parliament held in the third and fourth years of the Reign of His late Majesty King William the Fourth, entitled 'An Act for effecting an Arrangement with the East India Company and for the better Government of His Majesty's Indian Territories till the thirtieth day of April, One thousand eight hundred and fifty-four,' it was amongst other things enacted that in case it should please His Majesty to erect, found, and constitute two Bishopries, one to be styled the Bishopric of Madras and the other the Bishopric of Bombay, and from time to time to nominate and appoint Bishops to such Bishopries under the style and title of Bishops of Madras and Bombay respectively, there should be paid from and out of the Revenues of the said Territories to such Bishops respectively the sums therein mentioned. And it was also thereby provided and enacted that such Bishops should not have any jurisdiction or exercise any episcopal functions whatsoever either in the said Territories or elsewhere, but only such jurisdiction and functions as should or might from time to time be limited

CH. VIII. to them respectively by His Majesty by His Royal Letter Patent under the Great Seal of the said United Kingdom: and it was also thereby enacted that it should and might be lawful for His Majesty from time to time if he should think fit by His Royal Letters Patent under the Great Seal of the United Kingdom to assign limits to the Diocese of the Bishopric of Calcutta and to the Dioceses of the said Bishoprics of Madras and Bombay respectively, and from time to time to alter and vary the same limits respectively as to His Majesty should seem fit, and to grant to such Bishops respectively within the limits of the respective Dioceses the exercise of Episcopal functions and of such Ecclesiastical Jurisdiction as His Majesty should think necessary for the superintendence and good government of the United Church of England and Ireland therein. And it was thereby further provided and enacted that the Bishop of Calcutta for the time being should be deemed and taken to be the Metropolitan Bishop of India, and as such should have, enjoy, and exercise all such Ecclesiastical Jurisdiction and Episcopal Functions for the purposes aforesaid, as His Majesty should by His Royal Letters Patent under the Great Seal of the United Kingdom think necessary to direct, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being, and that the Bishops of Madras and Bombay for the time being respectively should be subject to the Bishop of Calcutta for the time being as such Metropolitan, and should at the time of their respective appointments to such Bishoprics or at the time of their respective consecrations as Bishop take an oath of obedience to the said Bishop of Calcutta in such manner as His Majesty by His said Royal Letters Patent should be pleased to direct. And whereas His said late Majesty King William the Fourth did by Letters Patent under the Great Seal of our said United Kingdom of Great Britain and Ireland, bearing date the thirteenth day of June in the fifth year of His Reign, ordain

and declare his Royal Will and Pleasure that from and after the tenth day of October then next ensuing the Territories then within the limits of the Presidency of Madras and also the Territories within the Island of Ceylon should be dissevered from and cease to be parts of the said Diocese and See of Calcutta, and did thereby revoke all and singular the rights, powers and authorities, functions and jurisdictions of the said Bishop of Calcutta in and over the Territories within the said Presidency of Madras, and also the territories within the said Island of Ceylon, except only such rights, powers, authorities, functions, and jurisdictions as should thereinafter be limited and confirmed. And after reciting that it was His intention by Letters Patent under the Great Seal of the United Kingdom, bearing even date with the said Letters Patent now in recital, to erect, found, and constitute the Territories in the East Indies within the limits of the Presidency of Madras and also the Territories within the said Island of Ceylon to be a Bishop's See to be called from thenceforth the Bishopric of Madras, did also by the same Letters Patent now in recital will and ordain that the Bishop of the said See of Calcutta for the time being should be and be deemed and taken to be the Metropolitan Bishop in India, and should have and enjoy and exercise such Ecclesiastical Jurisdiction as thereinafter mentioned (subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being in the same manner as the said Bishop of Calcutta was subject and subordinate to the Archiepiscopal See of the Province of Canterbury in the exercise of all Ecclesiastical Jurisdiction and powers which previously to the said Letters Patent now in recital were vested in the said Bishop), and did thereby (amongst other things) also will and ordain that the said Bishop of Madras should be a Suffragan to the said Bishop of Calcutta and his Successors, and did thereby give and grant unto the said Bishop of Calcutta and his successors full power and authority to perform all functions peculiar

CH. VIII. and appropriate to the Office of Metropolitan within the limits of the said See of Madras, and to exercise Metropolitical Jurisdiction over the Bishop of Madras and his Successors and the Archdeacon of Madras and Colombo and all other Chaplains, Ministers, Priests, and Deacons in Holy Orders of the United Church of England and Ireland within the limits of the said Diocese of Madras. And whereas His said late Majesty King William the Fourth did by Letters Patent under the Great Seal of Our said United Kingdom of Great Britain and Ireland, bearing even date with the Letters Patent lastly hereinbefore recited, erect, found, ordain, make, and constitute Our Territories in the East Indies within the limits of the said Presidency of Madras and our Territories within the said Island of Ceylon to be a Bishop's See and to be called from thenceforth the 'Bishopric of Madras,' and thereby name and appoint Daniel Corrie, Doctor of Laws, to be Bishop of the said See of Madras, and did also by the said Letters Patent now in recital Will and Ordain that the Bishop of the said See of Madras and his Successors should be subject and subordinate to the See of Calcutta and to the Right Reverend Father in God Daniel, the then Bishop of Calcutta, and his Successors in the same manner as any Bishop of any See within the Province of Canterbury in Our Kingdom of England is under the Authority of the Archiepiscopal See of the Province of Canterbury and the Archbishop thereof. And whereas His said late Majesty King William the Fourth did by Letters Patent under the Great Seal of our said United Kingdom of Great Britain and Ireland, bearing date the first day of October in the seventh year of His Reign, after reciting (amongst other things) as hereinbefore in part is recited, ordain and declare His royal will and pleasure that from and after the first day of July then next ensuing the Territories then within the limits of the Presidency of Bombay should be dissevered from and cease to be parts of the said Diocese and See of Calcutta, and did by the said

Letters Patent now in recital from and after the said first day of July then next revoke all and singular the rights, powers, authorities, functions, and jurisdictions of the said Bishop of Calcutta and his Successors in and over the Territories within the said Presidency of Bombay, except only with rights, powers, authorities, functions, and jurisdictions as should be thereinafter limited or confirmed. And after reciting that it was his intention by Letters Patent under the Great Seal of Our said United Kingdom bearing even date with the Letters Patent now in recital to erect, found, and constitute Our Territories in the East Indies within the limits of the Presidency of Bombay to be a Bishop's See and to be called from thenceforth the Bishopric of Bombay, and to appoint Thomas Carr, Doctor in Divinity, Sole Bishop of the See of Bombay, and to grant to such Bishop of Bombay and his Successors such Ecclesiastical Jurisdiction as next hereinafter recited, did by the Letters Patent now in recital in confirmation in this respect of his said Letters Patent of the said thirteenth day of June in the said fifth year of his reign will and ordain that the Bishop of the said See of Calcutta for the time being should be and be deemed and taken to be Metropolitan Bishop in India, and should have and enjoy and exercise such Ecclesiastical Jurisdiction as hereinafter mentioned (subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being in the same manner as the said Bishop of Calcutta was subject and subordinate to the Archiepiscopal See of the Province of Canterbury in the exercise of all Ecclesiastical Jurisdiction and powers which previously to the Letters Patent now in recital were vested in the said Bishop), and his said Majesty did thereby will and ordain that the said Bishop of Bombay should be a suffragan to the said Bishop of Calcutta and his Successors, and did give, grant, and confirm unto the said Bishop of Calcutta and his Successors full power and authority to perform all functions peculiar and appropriate to the Office

CH. VIII. of Metropolitan within the limits of the said See of Bombay, and to exercise Metropolitical Jurisdiction over the Bishop of Bombay and his Successors and the Archdeacon of Bombay and all other Chaplains, Ministers, Priests, and Deacons in Holy Orders of the United Church of England and Ireland within the limits of the said Diocese of Bombay, and did thereby also grant unto the said Bishop of Calcutta and his Successors certain other powers and authorities for the performance of his and their Metropolitical functions as on reference to the said Letters Patent will more fully appear. And whereas his said late Majesty King William the Fourth did by Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing even date with the said Letters Patent lastly hereinbefore recited, after reciting (amongst other things) as is hereinbefore in part recited, ordain and declare His Royal Will and Pleasure to be that from and after the said first day of July then next our Territories within the limits of the Presidency of Bombay should be erected into a Bishop's See, and did thereby erect, found, ordain, make, and constitute our Territories in the East Indies within the limits of the presidency of Bombay to be a Bishop's See accordingly, and to be called from thenceforth the Bishopric of Bombay, and did thereby name and appoint Thomas Carr, Doctor in Divinity, then Archdeacon of Bombay, to be Bishop of the said See of Bombay; and did thereby will and ordain that the Bishop of the said See of Bombay and his Successors should be subject and subordinate to the said See of Calcutta and to the Right Reverend Father in God Daniel, the then Bishop of Calcutta, and his Successors in the same manner as any Bishop of any See within the Province of Canterbury in our Kingdom of England is under the authority of the Archiepiscopal See of the Province of Canterbury and the Archbishop thereof. And whereas by our Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date the twenty-sixth day of April in the eighth year of our

Reign, after reciting as is hereinbefore recited, and that his said late Majesty King William the Fourth did by Letters Patent under the Great Seal of our said United Kingdom, bearing date the said thirteenth day of June in the fifth year of His Reign, constitute our Territories within the limits of the Presidency of Madras and also our Territories within the Island of Ceylon to be a Bishop's See, and to be styled the Bishopric of Madras: We did ordain and declare our Royal Will and Pleasure to be that, from and after the twenty-ninth day of September then next, our Territories within the Island of Ceylon should be erected into a Bishop's See. And we did by the said Letters Patent now in recital erect, found, ordain, make, and constitute our Territories within the Island of Ceylon to be a Bishop's See and to be called thenceforth the Bishopric of Colombo. And we did thereby name and appoint James Chapman, Doctor in Divinity, to be Bishop of the said See of Colombo. And we did by the said Letters Patent now in recital will and ordain that the Bishop of the said See of Colombo and his Successors should be subject and subordinate to the See of Calcutta and to the said Right Reverend Father in God Daniel, then Bishop of Calcutta, and his Successors in the same manner as any Bishop of any See within the Province of Canterbury in our Kingdom of England is under the authority of the Archiepiscopal See of the Province of Canterbury and the Archbishop thereof. And we did by the said Letters Patent now in recital also will and ordain that during a vacancy of the said See of Colombo by the demise of the said Bishop thereof or his Successors or otherwise the Episcopal Jurisdiction and functions appertaining to the said See should be exercised by the Bishop of Calcutta and his Successors. And whereas by our Letters Patent under the Great Seal of our said United Kingdom of Great Britain and Ireland, bearing date the tenth day of May in the twenty-first year of our reign, after reciting the death of the said Daniel Wilson, then late Bishop of Calcutta, we named and

CH. VIII. appointed our well-beloved George Edward Lynch Cotton, Master of Arts, to be Bishop of the said See and Diocese of Calcutta, so that the said George Edward Lynch Cotton should be and be taken to be Bishop of the said Bishop's See and Diocese of Calcutta, and might by virtue of such our nomination and appointment enter into and possess the said Bishop's See as the said Bishop thereof and perform the duties thereof, and have and exercise and enjoy the rights, privileges, and advantages thereto belonging. And whereas by Our Letters Patent under the Great Seal of Our said United Kingdom of Great Britain and Ireland, bearing date the twenty-fourth day of January in the thirtieth year of our Reign, after reciting the death of the said George Edward Lynch Cotton, then late Bishop of Calcutta, we named and appointed our well-beloved Robert Milman, Master of Arts, to be Bishop of the said See and Diocese of Calcutta, so that the said Robert Milman should be and be taken to be Bishop of the said Bishop's See and Diocese of Calcutta, and might by virtue of the said nomination and appointment enter into and possess the said Bishop's See as the said Bishop thereof, and perform the duties thereof, and have, exercise, and enjoy the privileges and advantages thereto belonging. And whereas the said Right Reverend Father in God Robert Milman hath lately departed this life, and the said See or Bishopric of Calcutta thereby became and now is vacant, now Know Ye that We, having great confidence in the learning, morals, probity, and prudence of our well-beloved The Venerable *Edward Ralph Johnson*, Doctor in Divinity, Archdeacon of Chester, do name and appoint him to be Bishop of the said See and Diocese of Calcutta, so that the said Edward Ralph Johnson shall be and be taken to be Bishop of the said Bishop's See and Diocese of Calcutta, and may by virtue of this our nomination and appointment enter into and possess the said Bishop's See as Bishop thereof, and perform the duties thereof, and have, exercise, and enjoy the rights, privileges, and advantages thereto belonging: Provided

nevertheless, and we do hereby declare, that the aforesaid nomination and appointment is subject to such power of revocation or recall as is by law vested in us, our heirs and successors, and subject also to the right of resignation hereinafter more particularly expressed. And we do hereby signify to the Most Reverend Father in God Archibald Campbell, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, Our nomination of the said Edward Ralph Johnson, requiring and by the Faith and Love whereby he is bound unto us commanding the Most Reverend Father in God to ordain and consecrate the said Edward Ralph Johnson to be Bishop of the said See and Diocese in manner accustomed, and diligently to do and perform all other things appertaining to his Office in this behalf with effect. And we do further Will and Ordain that the said Bishop of the said See of Calcutta and his successors the Bishops thereof for the time being shall be and be deemed and taken to be Metropolitan Bishop in India and the Island of Ceylon, and shall have and enjoy and exercise such Ecclesiastical Jurisdiction as hereinafter is mentioned, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being in the same manner as the said Bishop of Calcutta was subject and subordinate to the Archiepiscopal See in the Province of Canterbury in the exercise of all Ecclesiastical Jurisdiction and powers which previously to these Our Letters Patent were vested in the said Bishop. And we will and ordain that the Bishops of Madras, Bombay, and Colombo respectively and their Successors shall be Suffragan Bishops to the said Bishop of Calcutta and his Successors. And we give, grant, and confirm to the said Bishop of Calcutta and his Successors full power and authority to perform all functions peculiar and appropriate to the Office of Metropolitan within the limits of the said Sees of Madras, Bombay, and Colombo, and to exercise Metropolitical Jurisdiction over the Bishops of Madras, Bombay, and Colombo, and over all

CH. VIII. Archdeacons, Dignitaries, and all other Chaplains, Ministers, Priests, and Deacons in Holy Orders of the Church of England within the limits of the said Dioceses. And we do by these presents give and grant unto the said Bishop of Calcutta and his Successors full power and authority to visit once in every five years, or oftener if occasion shall require, as well the said Bishops of Madras, Bombay, and Colombo and their Successors, as all Archdeacons, Dignitaries, and all Chaplains, Ministers, Priests, and Deacons in Holy Orders of the Church of England resident in the said Dioceses for correcting and supplying the defects of the said Bishops and their Successors with all and all manner of Visitatorial Jurisdiction, Power, and Coercion. And we do hereby authorize and empower the said Bishop of Calcutta and his Successors to inhibit during any such visitation of the said Dioceses the exercise of all or such part or parts of the Ordinary Jurisdiction of the said Bishops or their Successors as to him the said Bishop of Calcutta or his Successors shall seem expedient, or during the times of such visitation to exercise by himself or themselves or his or their Commissaries such powers, functions, and jurisdiction in and over the said Dioceses as the Bishops thereof might have exercised if they had not been inhibited from exercising the same. And we do further ordain and declare that if any person against whom a Judgment or Decree shall be pronounced by the said Bishops or their Successors or their Commissary or Commissaries shall conceive himself to be aggrieved by such sentence, it shall be lawful for such person to appeal to the said Bishop of Calcutta or his Successors, provided such appeal be entered within fifteen days after such sentence shall have been pronounced. And we do give, grant, and confirm to the said Bishop of Calcutta and his Successors full power and authority finally to decide and determine the said appeals in as ample a manner as any of the Archbishops of England can or may hear and determine appeals from the Courts of the Bishops within his Province. And we do hereby

authorize and empower the said Bishop of Calcutta and his Successors and his and their Commissary or Commissaries to administer in his and their Metropolitical and Visitatorial and Appellate Jurisdiction over the said Sees of Madras, Bombay, and Colombo all such oaths as the Bishops of Calcutta have been accustomed lawfully to administer in their Ordinary Jurisdiction. Nevertheless we do, will, and by these presents declare and ordain that in the exercise of the Metropolitical, Visitatorial, and Appellate Jurisdiction aforesaid hereby limited and given to the said Bishop of Calcutta and his Successors all grave matters of correction which are accustomed according to the practice of the Ecclesiastical Laws of England to be judicially examined shall in like manner be judicially examined and proceeded in before the said Bishop of Calcutta and his Successors or his or their Commissary or Commissaries, and all such causes shall be proceeded in to final sentence in due form of Law. And We do further will and ordain that in case any proceeding shall be instituted against any Bishop of Madras, Bombay, or Colombo, such proceedings shall originate and be carried on before the said Bishop of Calcutta, whom We hereby authorize and direct to take cognizance of the same. And we further will that during a vacancy of the said See of Calcutta by the demise of the Bishop thereof for the time being or otherwise the Episcopal jurisdiction and functions appertaining to the said See shall be exercised by such one of the Suffragan Bishops of Madras and Bombay for the time being as shall have been first consecrated. And in case of a vacancy of either of the said Sees of Madras and Bombay, then the same jurisdiction and functions shall be exercised by the Bishop of Madras or Bishop of Bombay for the time being as the case may be. And in case of a vacancy of both the said Sees of Madras and Bombay, then the same jurisdiction and functions shall be exercised as far as by law they may be by the Archdeacon of Calcutta for the time being. And in case of

CH. VIII. a vacancy of the Archdeaconry, then by the Archdeacon of Madras or the Archdeacon of Bombay, or by two Clergymen of the Church of England resident within the Diocese of Calcutta, as may be directed by the Governor-General of India in Council. And We further Will that during a vacancy of the said See of Madras by the demise of the Bishop thereof for the time being or otherwise the Episcopal Jurisdiction and Functions appertaining to such See shall be exercised by the said Bishop of Calcutta and his Successors, with power to delegate to the Bishop of Bombay for the time being the performance of such Episcopal Jurisdiction and Functions, and in case of a vacancy of the said See of Calcutta then the same jurisdiction and functions shall be exercised by the Bishop of Bombay for the time being, anything to the contrary in the said two several hereinbefore recited Letters Patent bearing date respectively the said thirteenth day of June in the said fifth year of the reign of His said late Majesty King William the Fourth notwithstanding. And in case of a vacancy of the said See of Bombay, then the same Jurisdiction and Functions shall be exercised as far as by law they may be by the Archdeacon of the See of Madras; or in case of a vacancy of the said Archdeaconry, then by two Clergymen of the Church of England resident within the Diocese as may be directed by the Governor-General of India in Council. And we further will that during a vacancy of the said See of Bombay by the demise of the Bishop thereof for the time being or otherwise the Episcopal Jurisdiction and Functions appertaining to such See shall be exercised by the said Bishop of Calcutta and his Successors, with power to delegate to the Bishop of Madras for the time being the performance of such Episcopal Jurisdiction and Functions. And in case of a vacancy of the said See of Calcutta, then the same Jurisdiction and Functions shall be exercised by the Bishop of Madras for the time being. And in case of a vacancy of the said See of Madras, then the same Jurisdiction and Functions shall be exercised, as far as by Law they may be,

by the Archdeacon of the See of Bombay for the time being; or in case of a vacancy of the said Archdeaconry, then by two Clergymen of the Church of England resident within the Diocese, as may be directed by the Governor-General of India in Council. And we do further will and ordain that during a vacancy of the said See of Colombo by the demise of the said Bishop thereof, or his Successors or otherwise, the Episcopal Jurisdiction and functions appertaining to the said See shall be exercised by the said Bishop of Calcutta and his Successors. And in case of a vacancy of the said See of Calcutta, then the same Jurisdiction and Functions shall be exercised, as far as by law they may be, by the Archdeacon of Colombo for the time being; or in case of a vacancy of the said Archdeaconry, then by two Clergymen of the Church of England resident within the Diocese, as may be directed by the Governor of Ceylon. And we further Will and Ordain that a copy of every sentence of deprivation, suspension, or other Ecclesiastical punishment or censure whatsoever promulgated or given or affirmed by the said Bishop of Calcutta or his Successors in the exercise of his or their Metropolitical, Visitatorial, or Appellate Jurisdiction, shall be certified and transmitted to the same person and in the same manner as copies of sentences promulgated or given by the said Bishop of Calcutta or his Successors in the exercise of his or their ordinary Jurisdiction ought to be certified and transmitted. And we further ordain that the High Court of Judicature at Calcutta, Madras, or Bombay, or in Ceylon, as the case may be, shall have such and the like jurisdiction and power of interfering by Writ of Prohibition or Mandamus in regard to all proceedings to be had or instituted or which might be had or instituted in pursuance of these presents, subject to the same laws, restrictions, and rules of practice as is or has been exercised by our Court of Queen's Bench at Westminster in regard to proceedings in the Ecclesiastical Courts in England, regard being had nevertheless to any special provisions or exceptions

CH. VIII. contained in these Our Letters Patent or to any other Laws and Regulations specially applicable to or concerning our Territories in the East Indies or the See and Diocese of Calcutta. Moreover it is our Royal Will and pleasure, and We do hereby declare and ordain, that nothing in these presents contained shall extend or be construed to extend to repeal, vary, or alter the provisions of the several Charters whereby Ecclesiastical Jurisdiction has been given to the said Courts of Judicature respectively so far as the same does not appertain to the correction of Clerks or the Spiritual Superintendence of Ecclesiastical persons, or to give to the said Bishop of Calcutta or his Successors any authority or Jurisdiction whatsoever in matters now cognizable in the said Courts, except as herein last before excepted. And we further by these presents expressly declare that the said Bishop of Calcutta having been respectively by Us, our heirs and Successors, named and appointed, and by the said Archbishop of Canterbury for the time being as Metropolitan of the said See canonically ordained and consecrated according to the form and usage of the Church of England, may perform all the functions peculiar and appropriate to the Office of Bishop within the said Diocese of Calcutta. And for removing all doubts with respect to the validity of the resignation of the said Office and Dignity of Bishop of Calcutta, it is our further Will that if the said Bishop or any of his Successors shall by Instrument under his hand and Seal delivered and sent to the Archbishop of Canterbury for the time being, and by him accepted and registered in the Office of the Vicar-General of the said Archbishop, resign the Office and Dignity of Bishop of Calcutta, such Bishop shall from the time of such acceptance and resignation cease to be Bishop of Calcutta to all intents and purposes, but without prejudice to any responsibility to which he may be liable in law or equity in respect of his conduct in his said Office. And moreover we recommend and enjoin our Governor-General of India and Our Governor of Ceylon,

and all and singular our Governors, Judges, and Justices, and all and singular Chaplains, Masters, and others our subjects within the parts aforesaid, that they and every of them be in and by all lawful ways and means aiding and assisting the said Bishop of Calcutta and his Successors in the execution of the premises in all things. And lastly, to the end that all things aforesaid may be firmly holden and done, We will and grant to the aforesaid Edward Ralph Johnson that he shall have these Our Letters Patent under our Great Seal of our said United Kingdom duly made and sealed.

In Witness whereof we have caused these our Letters to be made Patent.

Witness Ourself at Westminster the twenty-seventh day of November in the fortieth year of Our Reign,

By warrant under the Queen's sign manual,

(*Signed*) C. ROMILLY.

XI. COVENANT ENTERED INTO ON APPOINTMENT TO CIVIL SERVICE OF INDIA.

This Indenture made the day of in the year of our Lord 189 , between hereinafter called the Covenantor, of the one part, and the Secretary of State in Council of the other part. Whereas the Secretary of State in Council has appointed the Covenantor to serve Her Majesty as a member of the Civil Service of India, in the Presidency of Fort William in Bengal [Fort St. George], [Bombay], in the East Indies (with the option to the Government of India at any time and from time to time to require him to serve elsewhere in India), such service to continue during the pleasure of Her Majesty, Her Heirs and Successors, to be signified under the hand of the Secretary of State for India, but with liberty for the said Covenantor to resign the said service, with the previous permission of the Secretary of State in Council or of the Governor-General of India in Council. Now this Indenture witnesseth, and the

Recital of the terms on which the party enters into the service.

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He covenants—

said Covenantor doth hereby covenant and agree with and to the Secretary of State in Council, in manner and form following; that is to say,—

For his general fidelity.

1st. That while he shall be employed in the said service he will faithfully, honestly, and diligently do all such things as shall be lawfully committed to his charge by or on the part of the Secretary of State in Council, or of the Government in India, or in execution of his duty.

To obey orders of a general nature, and specially relating to the party.

2nd. That he will perform and obey all such general rules and regulations of the Secretary of State in Council and of the said service as shall be in force in relation to all things to be committed to his charge or to be done by him, or to any rank, office, or station in which he shall act, and will observe and obey all such orders relating to himself or his conduct as he shall receive from the Secretary of State in Council, or the Government of India, or any person who shall have lawful authority to command him.

To keep regular accounts, to preserve and duly deliver over chattels and realty, and to produce private accounts.

3rd. That he will regularly and justly keep all accounts touching his transactions for the Government in India, and will preserve and keep all such documents, chattels, and realty as shall be committed to his charge, or as it shall be his duty to preserve and keep, and shall not wilfully obliterate, cancel, or injure, nor permit to be obliterated, cancelled, or injured, any documents, chattels, or realty, belonging to Her Majesty, or in the custody of any person or persons on account of the Government, and will deliver all such documents, chattels, and realty as shall be in his custody or power to any person to whom he ought to deliver the same; and on demand made by or on behalf of the Secretary of State in Council, or of the Government in India, will deliver to such person or persons as shall be authorized to demand the same, all documents whatsoever touching any of the affairs or concerns of the Government, or anything in which he shall have been engaged as a servant in the Civil Service of India,—such delivery to be made without obliteration or concealment of any part of the books, papers, or writings to be delivered up, and notwith-

standing that they may not be the property of Her Majesty, or that there may be any entry or entries relating to his own affairs or those of any other person, or any other reason whatever.

Not to misapply or employ for improper purposes the property intrusted to his care.

4th. That he shall not make use of or apply the property of Her Majesty which he may have, for any purposes other than those for which he ought to use and apply it in the course of his said service, save and except such furniture, goods, and chattels as he may be justly entitled to the use of for his own proper accommodation.

Not to divulge secrets.

5th. That he shall not nor will divulge, disclose, or make known any matter relating to the affairs or concerns of the Government in India, or relating to any matter or thing in which he may act or be concerned or which may come to his knowledge in the course of his said service which may require secrecy and which ought to be kept secret (save and except as his duty may require), unless he shall be authorized or required to disclose and make known the same by the Secretary of State in Council, or the Government in India, or some other person or persons having competent authority for that purpose.

Not to accept corrupt presents or make corrupt bargains.

6th. That he shall not at any time, directly or indirectly, ask, demand, accept, or receive any sum of money, or security for money, or other valuable thing or service whatsoever, or any promise or engagement by way of present, gift, or gratuity, from any person or persons with whom or on whose behalf he shall, on the part of the Government in India, have any dealings or transactions, business or concern whatsoever, or from any person or persons from whom, by law or any orders or regulations of the Secretary of State in Council, or of any of the branches of the Government in India, he is or shall be restrained from demanding or receiving any sum of money or other valuable thing as a gift or present or under colour thereof.

Not to trade contrary

7th. That he shall not nor will by himself, or in partnership with any other person or persons, or by the agency of any

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to law or regulations.

other person or persons, either as principal, factor, or agent, directly or indirectly engage, carry on, or be concerned in any trade, dealings, or transactions whatsoever.

Not to quit India without leave, and to satisfy all debts to Her Majesty before departure.

8th. That he shall not nor will at any time return to Europe, nor remove from or leave the Presidency within which he shall be serving, without the previous permission of the Governor-General of India in Council in writing; and previously to any such return or removal he shall pay, satisfy, and perform all such debts, sums of money, duties, and engagements as he shall owe or be liable to perform to Her Majesty or to the Government in India, or any branch or department of the same.

To make prescribed payments towards pension, &c.

9th. That he shall and will forthwith upon his arrival at the said Presidency, and from time to time, so long as he shall continue in the service of Her Majesty, make such payments as, under the rules and regulations which shall be in force within the said Presidency of Fort William in Bengal [Fort St. George], [Bombay], shall become due or payable by him on account of the provision for his own pension or for pensions to his wife or children, or shall, at the option of the Secretary of State in Council or of the Governor-General of India in Council, allow the amount of such subscriptions to be deducted out of any money due or payable by the Government to him.

In witness whereof, the said Covenantor and being two members of the Council of India, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered by the above-named Covenantor in the presence of)

Signed, sealed, and delivered by the above-named two members of the Council of India in the presence of)

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